

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

AGENCY: Board of Agriculture

RULE CITATION: All Forms

DEADLINE FOR RECEIPT: Thursday, September 14, 2023.

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:

In each of your Submission for Permanent Rule forms, you have not filled in the date these Rules were adopted by the Agency in Box 6. Please revise the forms and resubmit.

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

Brian Liebman
Commission Counsel
Date submitted to agency: August 30, 2023

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

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 52B .0214

DEADLINE FOR RECEIPT: Thursday, September 14, 2023.

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

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

With respect to statutory authority, are rabbits considered livestock under Ch. 106? I see that G.S. 106-317 gives the Board the authority to establish a system of health certificated and permits “for the better protection of the swine and livestock of this State”, but I am not sure whether rabbits fall under the definition of “livestock”.

In (b), line 13, consider a cross reference to Rule .0202 for the contents and procedures for obtaining an official health certificate.

In (b)(2), line 25, please define “location”. In (a), the rule refers to countries and states, which would make sense here, but it isn’t explicitly stated.

In (d), line 31, did you mean to say “application for an importation permit”?

In (d), line 31, what is the “health certificate inspection date”? Is this the date on the “official health certificate”?

In (h), please correct several formatting errors. Please see 26 NCAC 02C .0108 for OAH’s formatting rule. Specifically, the text should be 1.5 spaced and justified. Also, please fix the indents on (h)(1) and (2).

Throughout (h), you use “exhibitions/shows”. Please say “exhibitions or shows”.

In (h)(1), line 10, what do you mean by USDA accredited?

In (h)(1), line 10, what does it mean to perform a “health assessment”?

In (h)(1), line 11, what does “other origins” mean? Other than what?

In (h)(1), line 12, is there a difference between a symptom that is “consistent with” the virus, and a symptom “of” the virus?

Brian Liebman
Commission Counsel

Date submitted to agency: August 30, 2023

In (h)(1), line 12, add a hyphen between “RHDV” and “2”.

In (h)(1), line 13, please omit the parentheses and incorporate the parenthetical material into the text. In doing so, please eliminate the use of slashes.

In (h)(1), line 14, what does it mean to return “directly” to the origin location?

In (h)(2), line 16, add a comma following “phone number”.

In your History Note, please include the full text, including the emergency and temporary rule adoptions.

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

1 02 NCAC 52B. 0214 is amended as published in 37:18 NCR 1870-1872 as follows:

2
3 **02 NCAC 52B .0214 IMPORTATION REQUIREMENTS: RABBITS, OR ANY SPECIES IN THE**
4 **ORDER LAGOMORPHA, INCLUDING HARES AND PIKAS**

5 (a) An import permit from the State Veterinarian is required for the importation of a rabbit, or any species in the order
6 of Lagomorpha, including hare and pika, into the State of North Carolina originating from:

- 7 (1) any country or state with Rabbit Hemorrhagic Disease Virus-2 (“RHDV-2”) detected; or
8 (2) a state or country without RHDV-2 if the animal makes any intervening stop in a country or state
9 with RHDV-2 detected, if the animal is commingled or exposed to any other animal in the order of
10 Lagomorpha not being shipped directly from the point of origin together, or if the imported rabbit
11 is exposed to materials such as cages, beddings, and supplies that have been in contact with another
12 animal in the order of Lagomorpha not shipped directly from the point of origin together.

13 (b) The import permit application shall be accompanied by an official health certificate certifying the animal to be
14 free from any contagious animal disease, including RHDV-2, as follows:

- 15 (1) If the animal is shipped directly without any intervening stops, without commingling or exposure to
16 any other animal in the order of Lagomorpha not being shipped directly from the point of origin
17 together, and without exposure to materials such as cages, beddings, and supplies that have been in
18 contact with another animal in the order of Lagomorpha not shipped directly from the point of origin
19 together, then the official health certificate shall be obtained within 7 days of the date of importation
20 into North Carolina.
21 (2) If the animal is shipped with intervening stops, with commingling or exposure to another animal in
22 the order of Lagomorpha not being shipped directly from the point of origin together, or with
23 exposure to materials such as cages, beddings, and supplies that have been in contact with another
24 animal in the order of Lagomorpha not shipped directly from the point of origin together, then the
25 official health certificate shall be obtained from the location of the last intervening stop,
26 commingling, or exposure, and within 7 days of the date of importation into North Carolina.

27 (c) No permit is needed for rabbits, or any species in the order of Lagomorpha, including hare and pika, brought into
28 the State on a temporary basis for the sole purpose of seeking veterinary services by a North Carolina licensed
29 veterinarian, lasting only until the end of the veterinary service visit, and the animal is brought directly to the veterinary
30 clinic and departs from the veterinary clinic to the originating state with no intervening stops.

31 (d) The application for a importation shall include the state of origin, health certificate inspection date, the owner’s
32 name, address, and phone number at the time of import, the import destination within the State of North Carolina, the
33 name, address, and phone number of the person with control and responsibility over the animal at the import
34 destination, and any federal licensing, permit, and documentation required for the importation of the animal if imported
35 from outside of the United States of America.

1 (e) A rabbit, or any species in the order of Lagomorpha, including hare and pika, requiring an import permit that is
2 imported into North Carolina shall be accompanied by an official health certificate with the import permit number and
3 shall be made available for inspection by the State Veterinarian or his or her designee upon request.

4 (f) An intervening stop is defined as a stop in a country or state longer than 24 hours but less than 10 days. The
5 location of any stop for longer than 10 days shall be deemed the new country or state of origin.

6 (g) Health certificates issued outside of the United States shall be issued in English and by a veterinarian with a valid
7 license to practice veterinary medicine in the country of export.

8 (h) The requirement for an entry permit and official health certificate are waived for a rabbit, or any species in the
9 order of Lagomorpha, including hare and pika, for exhibitions/shows that adhere to the following guidelines:

10 (1) A licensed and USDA accredited veterinarian performs a health assessment outside of the
11 exhibition/show venue prior to any commingling of animals from other origins, and prior to entry of the
12 exhibition/show venue. If an animal is found to exhibit any symptoms consistent with RHDV2 that animal
13 as well as any cohorts (same origin/traveled together/commingled) will be excluded from the
14 exhibition/show and must return directly to the origin location.

15 (2) The exhibition/show administrators, upon request from the NCDA&CS Veterinary Division, shall provide
16 the name, address, phone number and number of animals for every participant in the exhibition/show for
17 NCDA&CS disease epidemiological investigation and testing purposes.

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19 *History Note: Authority G.S. 106-317;*
20 *Eff. December 1, 2022;*
21 *Amendment Eff. October 1, 2023.*

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

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 52J .0901

DEADLINE FOR RECEIPT: Thursday, September 14, 2023.

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:

Please consider rewriting the first sentence of each of the items in this Rule in the active tense. Who may request the grant money?

In (4), line 23-24, are “fencing panels for runs” different than “fencing”?

In (5) and (6), what are the “rules adopted by the Board of Agriculture”? Please include a specific cross-reference.

In (5) and (6), the language seems repetitious of G.S. 19A-68(a). I think it would be helpful to define “administrative costs” and “capital expenditures” instead of repeating the statutory language.

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

Brian Liebman
Commission Counsel

Date submitted to agency: August 30, 2023

02 NCAC 52J .0901 is amended as published in 37:18 NCR 1872 as follows:

CHAPTER 52 – VETERINARY

SUBCHAPTER 52J – ANIMAL WELFARE SECTION

SECTION .0900 – ANIMAL SHELTER SUPPORT FUND

02 NCAC 52J .0901 ELIGIBLE EXPENSES

Eligible expenses include:

- (1) Veterinary costs – ~~Reimbursement~~Grant money may be requested for veterinary expenditures incurred for the assessment, diagnostic and triage evaluation, medical treatment, minor surgical treatment, medications, first aid and minor medical supplies, vaccinations, parasite control/treatment, or euthanasia of animals housed at the ~~shelter at the time of the event or impounded during the interim or transition period~~shelter.
- (2) Sanitation costs – ~~Reimbursement~~Grant money may be requested for expenditures related to sanitation of the ~~affected~~ shelter, including detergent/disinfectant supplies, cleaning supplies, labor costs for the sanitation of the shelter, and waste and carcass disposal costs.
- (3) Animal sustenance and supplies – ~~Reimbursement~~Grant money may be requested for expenditures for animal food, provision of water to the shelter, and food and water bowls or buckets, as well as labor costs for the feeding and watering of the shelter animals.
- (4) Temporary housing and sheltering of animals – ~~Reimbursement~~Grant money may be requested for expenditures for animal cages and kennels, animal transport carriers, fencing panels for runs, tarps, fencing, dog or cat houses and other construction supplies, as well as labor costs or equipment or facility leasing expenses incurred during the construction or repair of temporary animal housing.
- ~~(5) Administrative Costs – Grant money may be requested for administrative costs only if such costs are directly required for the facility to comply with the North Carolina Animal Welfare Act (AWA) or the rules adopted by the Board of Agriculture implementing that Act.~~
- ~~(6) Capital Expenditures – Grant money may be requested for capital expenditures for facilities and equipment costs only if such costs are directly required for the facility to comply with the AWA or the rules adopted by the Board of Agriculture implementing that Act.~~

*History Note: Authority G.S. 19A-67; 19A-68;
Temporary Adoption Eff. November 29, 2016;
Temporary Adoption Expired Eff. September 11, 2017;
Eff. November 1, 2017;
Readopted Eff. September 1, 2022.*

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

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 52J .0902

DEADLINE FOR RECEIPT: Thursday, September 14, 2023.

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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:

In (a), line 5, where and how does the Board wish the applicant to submit the application to the Animal Welfare Section?

In (a), is there a time frame for submitting the application?

In (b), line 19 should be moved up to follow the end of the sentence on line 18.

In (b), lines 19-20, isn't this just repeating (a)? Both paragraphs essentially say that applicants need to submit a form. Consider consolidating (a) and (b) into one paragraph.

In (b), line 20, has the Form gone through rulemaking, or are its contents or substantive requirements otherwise described in a rule or statute?

In (b), line 20, are the "application" and the "Form" the same thing?

Does the list under paragraph (b) contain all the information required for the application to be "complete"? This is particularly important here given how "completeness" is emphasized as a standard for judging the application in Rule .0903.

Where in (b) would the applicant provide the Board with the "itemized listing of the costs for which funding is sought" required in 19A-68(c)?

In (b)(1), line 21, "including" has an open-ended connotation. What other information are you requiring from the applicant?

In (b)(2), line 23, add a comma following "address".

In (b)(3), line 25, please eliminate the "(s)" and either make "violation(s)" plural or say "violation or violations". Same in (b)(5), line 30.

Brian Liebman
Commission Counsel

Date submitted to agency: August 30, 2023

In (b)(4), line 28, add an “and” following the final semicolon.

I think you need to combine (3) and (4), otherwise the “or” may lead applicants to think that (4) and (5) are both optional.

In (b)(4), line 27, what is an “unforeseen catastrophic disaster”? I understand this term is used in G.S. 19A-67(b)(1), but while the General Assembly is free to be vague and ambiguous, an agency is not.

In (b)(5), line 29, please delete or define “significantly”.

In (b)(5), line 29, please consider revising in the active tense. For instance, “an explanation of how the applicant will use the grant funds to resolve or mitigate...”

In (b)(5), lines 30-31, what “rules” and “associated rules” are you referring to?

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

Brian Liebman
Commission Counsel

Date submitted to agency: August 30, 2023

02 NCAC 52J .0902 is amended as published in 37:18 NCR 1872-1873 as follows:

02 NCAC 52J .0902 APPLICATION GUIDELINES

(a) A local government applying for ~~reimbursement~~ grant money from the Animal Shelter Support Fund (the Fund) shall submit the ~~request for reimbursement~~ completed application form to the Animal Welfare Section (AWS) of the North Carolina Department of Agriculture and Consumer Services.

~~(b) The request shall:~~

- ~~(1) be received by AWS by mail, email, or fax within 60 days of the date the eligible expense was incurred;~~
- ~~(2) include a completed "Animal Shelter Support Fund Reimbursement Application" with the county name, tier of county, facility name, facility license number, and contact information. This application can be found on the AWS website (<http://www.ncagr.gov/vet/AWS/>);~~
- ~~(3) include an itemized listing of eligible expenses for which reimbursement is sought;~~
- ~~(4) include proof that matching funds have been provided; and~~
- ~~(5) include proof of payment of the eligible expense. If the payment of expense occurs after the application was submitted, proof of payment shall be submitted to AWS within 30 days of payment of the expense.~~

~~(b) Application forms and instructions are available online at: <https://www.ncagr.gov/vet/aws/>.~~

To be eligible for consideration for grant funds from the Fund, applicants shall complete the Animal Shelter Support Fund Application Form. This application shall contain the following information:

- (1) local government information including the name and contact information for the municipal official that oversees the operation of the government animal shelter;
- (2) name, address and contact information for the animal shelter for which the funds are being applied;
- (3) a copy of the AWS Order of Suspension, AWS Order of Revocation, or AWS Facility Compliance Inspection report citing the specific violation(s) for which the county is applying for the grant funds;
or
- (4) the date and description of the incident and damage incurred by the unforeseen catastrophic disaster at the animal shelter;
- (5) an explanation of how the use of the grant funds will resolve or significantly mitigate the cited violation(s) of the AWA and its rules and how the applicant will ensure future compliance with the AWA and its associated rules.

*History Note: Authority G.S. 19A-67; 19A-68;
Temporary Adoption Eff. November 29, 2016;
Temporary Adoption Expired Eff. September 11, 2017;
Eff. November 1, 2017;
Readopted Eff. September 1, 2022.*

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

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 52J .0903

DEADLINE FOR RECEIPT: Thursday, September 14, 2023.

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

In (a), is the implication here that the agency will only look at the four corners of the application, and will not consider any extraneous information when judging the application? If so, that should be stated more clearly. Otherwise it seems a little redundant to say the application will be judged based on the information in the application.

In (c), line 8, what do you mean by “general criteria”? Are there “specific” criteria unspoken here?

In (c)(1), line 9, this seems to repeat (b), and moreover, it doesn't seem to be a criteria for evaluation, given that an incomplete application is merely returned to the applicant, rather than denied.

In (c)(1), line 9, what “supporting documentation” are you referring to? I don't see anything else required in Rule .0902 besides the explanation in .0902(b)(5), and that's already mentioned in (c)(2) and (3), so obviously those are separate. To the extent that this is a separate requirement, please add it to Rule .0902 so that your regulated public will be able to submit a “complete” application.

In (c)(2), (3), and (4), please correct the formatting by keeping the text on the second line of each item flush with the indent on the first line.

*In (c)(2), line 10, what are you evaluating for? All this says is that you will “evaluate” the explanation. It doesn't say **how** you will evaluate it.*

In (c)(3), line 12, again, this seems to repeat (b), and moreover, it doesn't seem to be a criteria for evaluation, given that an incomplete application is merely returned to the applicant, rather than denied.

Brian Liebman
Commission Counsel

Date submitted to agency: August 30, 2023

*In (c)(4), line 14, what are you evaluating for? All this says is that you will “evaluate” the explanation. It doesn’t say **how** you will evaluate it.*

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

Brian Liebman
Commission Counsel
Date submitted to agency: August 30, 2023

1 02 NCAC 52J .0903 is adopted as published in 37:18 NCR 1873 as follows:

2

3 **02 NCAC 52J .0903 EVALUATION OF APPLICATIONS**

4 (a) Each completed application shall be evaluated by AWS staff based on the information provided in the
5 application.

6 (b) The staff shall review all applications for completeness. If an application is incomplete, the applicant shall be
7 asked to reapply with a new, completed application.

8 (c) The following general criteria shall be used to evaluate the applications:

9 (1) the completeness of the application including supporting documentation;

10 (2) the explanation of how the compliance violations will be resolved or significantly mitigated with
11 the use of the grant funds;

12 (3) the completeness of the explanation of the plans to ensure future compliance with the AWA and its
13 associated rules; or

14 (4) in the incidence of an unforeseen catastrophic occurrence, the explanation of how the grant funds
15 will be used to mitigate the damage done by the incident;

16 (5) the amount of funds available;

17 (6) the amount of funds requested; and

18 (7) the order in which the application was received.

19

20 *History Note: Authority G.S. 19A-67; 19A-68;*

21 *Eff. October 1, 2023.*

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

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 52J .0904

DEADLINE FOR RECEIPT: Thursday, September 14, 2023.

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

As an initial matter, does the Board have statutory authority to require this Report, or to claw back a dispersed grant? I don't see anything explicit in Article 5A, and in fact your rulemaking authority in 19A-67(c) speaks only to issuing "rules detailing eligible expenses and application guidelines that comply with the requirements of this Article." Is there another more general statute that would give you this authority?

In (a)(1), line 6, please define "detailed".

In (c), line 14, please define "contested funds".

In (c), line 14, please make the second instance of "contested fund" plural.

In (c), are you saying that the local government will have to return funds already spent by the shelter?

In (d), is there statutory authority to require the shelter to spend all or some of the funds within 60 days?

In (d), does this requirement implicitly mean that the shelter must spend the funds within 60 days?

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

Brian Liebman
Commission Counsel

Date submitted to agency: August 30, 2023

1 02 NCAC 52J .0904 is adopted as published in 37:18 NCR 1873 as follows:

2

3 **02 NCAC 52J .0904 GRANT CLOSEOUT REPORT**

4 (a) The local government agency receiving a grant from the Fund shall submit a final Grant Closeout Report to AWS
5 that contains the following information:

6 (1) a detailed accounting of how the grant funds were spent;

7 (2) the date by which the corrective actions for the items of non-compliance were completed; and

8 (3) in the case of a disaster incident, the date by which the repairs or corrective actions were
9 completed.

10 (b) In the event that the local government agency does not use all the grant funding awarded from the Fund, the
11 remaining funds shall be returned to AWS within 14 days of the completion of the corrective actions or repairs.
12 Returned funds shall be reimbursed to the Fund.

13 (c) In the event that AWS determines that the grant funds were not used for their intended purpose as stated in the
14 application, the local government shall return the contested funds to AWS. Contested fund shall be reimbursed to the
15 Fund.

16 (d) In the event that the local government agency does not spend the grant funding within 60 days of the award, the
17 agency shall update AWS on the status of the funds every 60 days until the Grant Closeout Report has been filed.

18

19 History Note: Authority G.S. 19A-67; 19A-68;

20 Eff. October 1, 2023.