

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .0102

DEADLINE FOR RECEIPT: November 9, 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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

On lines 4 and 5, the phrase “except when the context of the rule requires a different meaning” appears to be vague. How would someone know if the context requires a different meaning?

*On line 24, remove the first comma, “G.S. 110-86(2), **G.S. 110-86(2)** that”.*

G.S. 150B-21.6 allows the incorporations of “a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.” Are the materials incorporated in items (14), (16), (18), (26), and (42) “standards adopted by a generally recognized organization or association”?

On p. 3, line 6, family child care homes care are defined as caring for less than nine children. It appears that S.L. 2023-134 Sec. 9D.10(a) changed the number of children in a family child care home to less than 10. Why doesn't this need to match?

On p. 4, line 31, what does it mean for coursework to be “substantially equivalent”?

*On p. 5, line 17, you use the phrase “substantially equivalent”, but on line 18 you describe “equivalent coursework.” Should line 18 be “Substantially **Equivalent** equivalent coursework”? Or is there a difference I am missing?*

On p. 5, line 19, “include, but not be limited to” suggests that there are additional requirements beyond lines 20 through 29. What are those requirements?

On p. 6, line 35, you have “determine that is an environmental or weather related threat”. Wouldn't all weather related threat's be environmental? Or is there a meaning I am missing here?

Seth Ascher
Commission Counsel

Date submitted to agency: November 8, 2023

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

Seth Ascher
Commission Counsel

Date submitted to agency: November 8, 2023

10A NCAC 09 .0102 is amended as published in 37:24 NCR 2212-2216 as follows:

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Activity area" means a space that is accessible to children and where related equipment and materials are kept in accordance with G.S. 110-91(12).
- (2) "Agency" as used in this Chapter means Division of Child Development and Early Education, Department of Health and Human Services located at 333 Six Forks Road, Raleigh, North Carolina 27609.
- (3) "Appellant" means the person or persons who request a contested case hearing.
- (4) "Asbestos hazard" means a condition that results in exposure to asbestos in excess of the standards set forth in 10A NCAC 41C .0607(a) or to a category of asbestos containing material defined at 40 C.F.R. 763.88(b)(1)-(6).
- ~~(4)~~ (5) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project.
- ~~(5)~~ (6) "Biocontaminant" means blood, bodily fluids, or excretions that may spread infectious disease.
- ~~(6)~~ (7) "Child Care Center" means an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care. This does not include arrangements described in Item (18) of this Rule regarding Family Child Care Homes.
- ~~(7)~~ (8) "Child Care Facility" means child care centers, family child care homes, and any other child care arrangement not excluded by G.S. 110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.
- ~~(8)~~ (9) "Child care provider" as defined by G.S. 110-90.2(a)(2) includes the following employees who have contact with the children in a child care program:
 - (a) facility directors;
 - (b) child care administrative staff;
 - (c) teachers;
 - (d) teachers' aides;
 - (e) substitute providers;
 - (f) uncompensated providers;
 - (g) cooks;
 - (h) maintenance personnel; and
 - (i) drivers.

~~(9)~~(10) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.

~~(10)~~(11) "Curriculum" means a curriculum that has been approved as set forth in these Rules by the NC Child Care Commission as comprehensive, evidenced-based, and with a reading component.

~~(11)~~(12) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.

~~(12)~~(13) "Division" means the Division of Child Development and Early Education within the Department of Health and Human Services.

~~(13)~~(14) "Domains" means the developmental areas of learning described in the North Carolina Foundations for Early Learning and Development © 2013, available on the Division's website at https://ncchildcare.nc.gov/providers/pv_foundations.asp. This instrument is incorporated by reference and does not include subsequent editions. The domains address children's emotional and social development, health and physical development, approaches to play and learning, language development, and communication and cognitive development.

~~(14)~~(15) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.

~~(15)~~(16) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. https://www.tcpres.com/search?search_term=assessment+materials. The cost of this scale is ~~twenty-four~~ twenty-five dollars and ninety-five cents (~~\$24.95~~). (\$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours. For the purposes of this Rule, "regular business hours" for the Division means 8 a.m. to 5 p.m. during weekdays, excluding state holidays.

~~(16)~~(17) "Experience working with school-age children" means working with school-age children as a child care administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher or aide.

~~(17)~~(18) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html.

https://www.tcpress.com/search?search_term=assessment+materials. The cost of this scale is ~~twenty-four~~ twenty-five dollars and ninety-five cents (~~\$24.95~~; \$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.

~~(18)~~(19) "Family Child Care Home" means a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care. Family child care home operators must reside at the location of the family child care home.

~~(19)~~(20) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.

~~(20)~~(21) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and in this Chapter, using space the Division has identified for each group.

~~(21)~~(22) "Health care professional" means:

- (a) a physician licensed in North Carolina;
- (b) a nurse practitioner approved to practice in North Carolina; or
- (c) a licensed physician assistant.

~~(22)~~(23) "Household member" means a person who resides in a family home as evidenced by factors including maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.

~~(23)~~(24) "If weather conditions permit" means:

- (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://idph.iowa.gov/Portals/1/Files/HCCI/weatherwatch.pdf>; and is incorporated by reference and includes subsequent editions and amendments;
- (b) following the air quality standards as set out in 15A NCAC 18A .2832(d). The Air Quality Color Guide can be found on the Division's web site at <https://xapps.ncdenr.org/aq/ForecastCenterEnvista> or call 1-888-RU4NCAIR (1-888-784-6224); <https://www.deq.nc.gov/mitigation-services/publicfolder/library/news/brochures/air-quality-color-guide/download>; and
- (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.

~~(24)~~(25) "Infant" means any child from birth through 12 months of age.

~~(25)~~(26) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than 30 months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. http://www.tcpres.com/search?search_term=assessment+materials. The cost of this scale is ~~twenty-four~~ twenty-five dollars and ninety-five cents (~~\$24.95~~). (\$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.

~~(26)~~(27) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation and administered by the North Carolina Child Care Health and Safety Resource Center for the Division of Child Development and Early Education for caregivers of children ages 12 months and younger. Information regarding trainer and training availability can be found on the Division's website at http://ncchildcare.ncdhhs.gov/providers/pv_itssidsproject.asp.

~~(27)~~(28) "Lead Teacher" means an individual who is responsible for planning and implementing the daily program of activities for a group of children in a child care facility. A lead teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.

~~(28)~~(29) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.

~~(29)~~(30) "Lockdown drill" means an emergency safety procedure in which occupants of the facility remain in a locked indoor space and is used when emergency personnel or law enforcement determine a dangerous person is in the vicinity.

~~(30)~~(31) "North Carolina Early Childhood Administration Credential" means the state early childhood administration credential that is based on completion of required early childhood coursework taken at any NC Community College. Other post secondary curriculum coursework shall be approved as equivalent if the Division determines that the content of the other post secondary curriculum coursework offered is substantially equivalent to the NC Early Childhood Administration Credential Coursework. A copy of the North Carolina Early Childhood Administration Credential requirements is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection or copying at no charge during regular business hours. This information can be found on the Division's website at <http://ncchildcare.ncdhhs.gov/providers/credent.asp>.

~~(31)~~(32) "North Carolina Early Educator Certification (certification)" is an acknowledgement of an individual's verified level of educational achievement based on a standardized scale. The North

Carolina Institute for Child Development Professionals certifies individuals and assigns a certification level on two scales:

- (a) the Early Care and Education Professional Scale (ECE Scale) in effect as of July 1, 2010; or
- (b) the School Age Professional Scale (SA Scale) in effect as of May 19, 2010.

Each scale reflects the amount of education earned in the content area pertinent to the ages of children served. The ECE Scale is designed for individuals working with or on behalf of children ages birth to five. The SA Scale is designed for individuals working with or on behalf of children ages 5 to 12 who are served in school age care settings. Information on the voluntary certification process can be found on the North Carolina Institute for Child Development Professionals website at <http://ncicdp.org/certification-licensure/eec-overview/>.

~~(32)~~(33) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of required early childhood coursework taken at any ~~NC~~ North Carolina Community College. Other ~~post-secondary curriculum coursework~~ equivalences shall be approved by the Division ~~as equivalent~~ if the Division determines that the content of the other ~~post-secondary curriculum~~ coursework or other pathways are offered is substantially equivalent to the ~~NC~~ North Carolina Early Childhood Credential ~~Coursework~~ coursework. Equivalent coursework shall include, but not be limited to:

- (a) a currently active Child Development Associate Credential from the Council for Professional Recognition, a Certified Child Care Professional Credential from the National Early Childhood Program Accreditation, or a Montessori Credential from any of the Montessori Accreditation Council for Teacher Education, American Montessori Society, National Center for Montessori Education, or Association Montessori Internationale; or
- (b) a passing score on a test developed by the early childhood faculty of the North Carolina Community College System designed to demonstrate an individual's mastery of the concepts taught in early childhood coursework taken at any North Carolina community college.

A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection or copying at no charge during regular business hours. This information can be found on the Division's website at <http://ncchildcare.ncdhhs.gov/providers/credent.asp>.

~~(33)~~(34) "Operator" means the owner, director, or other person having responsibility for operation of a child care facility subject to licensing.

1 ~~(34)~~(35) "Owner" means any person with a five percent or greater equity interest in a child care facility;
2 however, stockholders of corporations who own child care facilities shall not be subject to mandatory
3 criminal history checks pursuant to G.S. 110-90.2 unless they are a child care provider.

4 ~~(35)~~(36) "Parent" means a child's parent, legal guardian, or full-time custodian.

5 ~~(36)~~(37) "Passageway" means a hall or corridor.

6 ~~(37)~~(38) "Person" means any individual, trust, estate, partnership, corporation, joint stock company,
7 consortium, or any other group, entity, organization, or association.

8 ~~(38)~~(39) "Premises" means the entire child care building and grounds including natural areas, outbuildings,
9 dwellings, vehicles, parking lots, driveways and other structures located on the property.

10 ~~(39)~~(40) "Preschooler" or "preschool-age child" means any child who is at least three years of age and does
11 not fit the definition of school-age child in this Rule.

12 ~~(40)~~(41) "Reside" refers to any person that lives at a child care facility location. Factors for determining
13 residence include:

14 (a) use of the child care facility address as a permanent address for personal identification or
15 mail delivery;

16 (b) use of the child care facility to store personal belongings such as furniture, clothing, and
17 toiletry items; and

18 (c) names listed on official documents such as criminal records or property tax records.

19 ~~(41)~~(42) "School-Age Care Environment Rating Scale, Updated Edition" (Harms, Jacobs, and White, 2014,
20 published by Teachers College Press) is the instrument used to evaluate the quality of care received
21 by a group of children in a child care center, when the majority of the children in the group are older
22 than five years, to achieve three or more points for the program standards of a rated license. This
23 instrument is incorporated by reference and does not include subsequent editions. A copy of the
24 scale is available for purchase on the Teacher College Press website at
25 ~~https://www.teacherscollegepress.com/assessment_materials.html~~
26 https://www.tcpspress.com/search?search_term=assessment+materials. The cost of this scale is
27 ~~twenty-four~~ twenty-five dollars and ninety-five cents (~~\$24.95~~). (\$25.95). A copy of this instrument
28 is on file at the Division at the address given in Item (2) of this Rule and is available for public
29 inspection during regular business hours.

30 ~~(42)~~(43) "School-age child" means any child who is attending or who has attended a public or private grade
31 school or kindergarten and meets age requirements as specified in G.S. 115C-364.

32 ~~(43)~~(44) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).

33 ~~(44)~~(45) "Shelter-in-Place drill" means staying in place to take shelter rather than evacuating. It involves
34 selecting a small interior room, with no or few windows, and used when emergency personnel or
35 law enforcement determine there is an environmental or weather related threat.

36 ~~(45)~~(46) "Staff" or "staff member" as used in this Chapter includes child care providers, substitute providers,
37 and uncompensated providers. Volunteers, as defined in this Rule, are not staff members.

~~(46)~~(47) "Substitute provider" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months and may or may not be monetarily compensated by the facility. Any substitute provider must be at least 18 years of age and literate.

~~(47)~~(48) "Teacher" means an individual who assists the Lead Teacher in planning and implementing the daily program of activities for a group of children in a child care facility. A teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.

~~(48)~~(49) "Teacher's aide" or "Aide" means a person who assists the lead teacher or the teacher in planning and implementing the daily program. A teacher's aide shall be at least 16 years old and less than 18 years old, shall be literate, and may count in staff/child ratio as long as there is also a credentialed staff person who is at least 21 years of age present in the room and available to respond to the needs of the teacher's aide and children in care.

~~(49)~~(50) "Toddler" means any child ages 13 months to 35 months of age.

~~(50)~~(51) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.

~~(51)~~(52) "Uncompensated provider" means a person who works in a child care facility and is counted in staff/child ratio or has unsupervised contact with children, but who is not monetarily compensated by the facility. Any uncompensated provider must be at least 18 years of age and literate.

~~(52)~~(53) "Volunteer" means a person who works in a child care facility and is not counted in staff/child ratio, does not have unsupervised contact with children, and is not monetarily compensated by the facility. A person who is at least 13 years of age, but less than 16 years of age, may work on a volunteer basis, as long as he or she is supervised by and works with a staff person who is at least 21 years of age and meets staff qualification requirements.

History Note: Authority G.S. 110-85; 110-88; 110-90.2; 143B-168.3;
Eff. January 1, 1986;
Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989;
Temporary Amendment Eff. January 1, 1996;
Amended Eff. March 1, 2015; May 1, 2013; September 1, 2012; July 3, 2012; July 1, 2012;
November 1, 2007; May 2006; May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1,
1998; April 1, 1997;
Readopted Eff. October 1, 2017;
Amended Eff. November 1, 2023; February 1, 2022; February 1, 2021; September 1, 2019.

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .0601

DEADLINE FOR RECEIPT: November 9, 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:

G.S. 110-91 appears to give the Commission for Public Health the authority to adopt rules on sanitation and safety in child care facilities, which I believe they have done. Where does the Child Care Commission get authority to adopt rules on the same subject?

What is paragraph (a) actually requiring? Just compliance with the rules in this section? If so, it is not necessary.

On line 6, what is the standard for determining if something is “safe”?

On line 6, “shall be provided” is passive and potentially introduces an ambiguity as to who is responsible for providing the safe environment. Rewrite to make the subject who must provide the environment.

On line 8, what is the standard for “good repair”?

On line 10 and 11, “if available” is unclear. Available to whom and in what way? For example, if a child care center threw away the instructions, are they unavailable?

On line 12, what is the standard for “sturdy”?

On line 13, is “protrusion” defined somewhere?

On line 15, “shall be removed” is passive and potentially introduces ambiguity as to who is responsible for removing the equipment. Rewrite to make the subject who must remove the equipment.

*On line 17, I believe you are missing a word “adapted **for** use”.*

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

Seth Ascher
Commission Counsel

Date submitted to agency: November 8, 2023

10A NCAC 09 .0601 is amended as published in 37:24 NCR 2216 as follows:

SECTION .0600 - SAFETY REQUIREMENTS FOR CHILD CARE CENTERS

10A NCAC 09 .0601 SAFE ENVIRONMENT

(a) A safe indoor and outdoor environment shall be provided for the children in care in accordance with rules in this Section.

(b) All equipment and furnishings shall be in good repair. All commercially manufactured equipment and furnishings shall be assembled and installed according to procedures specified by the manufacturer. For equipment and furnishings purchased after September 1, 2017, the manufacturer's instructions shall be kept on file or electronically accessible, if available.

(c) Equipment and furnishings shall be sturdy, stable, and free of hazards that may injure children including sharp edges, lead based or peeling paint, rust, loose nails, splinters, protrusions (excluding nuts and bolts on sides of fences), and pinch and crush points.

(d) All equipment and furnishings not meeting the requirements of Paragraphs (b) and (c) of this Rule shall be removed from the premises immediately or made inaccessible to the children.

(e) Each child care center shall provide equipment and furnishings that are child-size or that can be adapted use by children. Chairs and tables shall be of appropriate height for the children who will be using them.

(f) Each child care center shall be free of lead poisoning hazards as defined in G.S. ~~130A-131.7(7)~~. 130A-131.7(7) and asbestos hazards.

*History Note: Authority G.S. 110-91(3),(6); 143B-168.3;
Eff. January 1, 1986;
Amended Eff. January 1, 1996; January 1, 1991;
Readopted Eff. October 1, 2017;
Amended Eff. November 1, 2023; February 1, 2021.*

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .1707

DEADLINE FOR RECEIPT: November 9, 2023

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

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

G.S. 110-91 appears to give the Building Code Council the authority to adopt rules related to building requirements, which I believe they have done. G.S. 110-91(4) seems to contemplate the Child Care Commission requesting changes to the Building Code rather than adopting their own rules on the subject. Where does the Child Care Commission get authority to adopt rules on the same subject?

On line 5, the phrase "ground level of exit discharge" is an odd way to state this requirement. Consider rephrasing.

On line 12, there are several codes which are informally referred to as the NC Building Code. Which do you mean specifically?

On line 13 and 14, does temperature in this rule refer to indoor or outdoor temperature? Clarify.

On line 18, what kind of "changes" to the designated space must be submitted? Do you just mean changes to the floor plan of what space is designated?

Why is G.S. 110-86(3) in the history note for authority?

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

Seth Ascher
Commission Counsel

Date submitted to agency: November 8, 2023

10A NCAC 09 .1707 is amended as published in 37:24 NCR 2216-2217 as follows:

10A NCAC 09 .1707 BUILDING REQUIREMENTS

The applicant shall ensure that the family child care home complies with the following requirements:

- (1) all children are kept on the ground level of exit discharge; ~~with an exit at grade~~;
- (2) all family child care homes must be free of lead poisoning hazards as defined in G.S. ~~130A-131.7(7)~~; 130A-131.7(7) and asbestos hazards;
- (3) all homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other;
- (4) all homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500 square feet of floor area;
- (5) heating appliances shall be installed and maintained according to the NC Building Code;
- (6) all indoor areas used by children are heated when the temperature is below 65 degrees and ventilated when the temperature is above 85 degrees;
- (7) pipes or radiators that are hot enough to be capable of burning children and are accessible to the children are covered or insulated; and
- (8) children are cared for in space designated as the caregiving area on a floor plan provided by the operator to the Division as specified in 10A NCAC 09 .1709. Changes to the designated caregiving space shall be submitted to the Division 30 days prior to the new space being used by children.

*History Note: Authority G.S. 110-85; 110-86(3); 110-91; 143B-168.3;
Eff. October 1, 2017;
Amended Eff. November 1, 2023; February 1, 2021.*

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .1725

DEADLINE FOR RECEIPT: November 9, 2023

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G.S. 110-91 appears to give the Commission on Public Health the authority to adopt rules related to sanitation, which I believe they have done. Where does the Child Care Commission get authority to adopt rules on the same subject?

On line 19, is “sanitary” defined somewhere?

*On line 19, add a comma “~~changing~~ **changing**, and”.*

*On line 25, add a comma “~~nonabsorbent~~ **nonabsorbent**, and”*

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

Seth Ascher
Commission Counsel

Date submitted to agency: November 8, 2023

10A NCAC 09 .1725 is amended as published in 37:24 NCR 2217 as follows:

10A NCAC 09 .1725 SANITATION REQUIREMENTS FOR FAMILY CHILD CARE HOMES

(a) To assure the health of children through proper sanitation, the family child care home operator shall:

- (1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by ~~the North Carolina Division of Laboratory Services~~ the North Carolina State Laboratory of Public Health every two years. Results of the analysis shall be on file in the home;
- (2) collect and submit samples of water from each water outlet used for drinking or food preparation for lead analysis to the local health department or a laboratory certified to analyze for lead in drinking water by the North Carolina State Laboratory of Public Health. Results of the analysis shall be on file in the home. For operators that submit an application for licensure after the effective date of this Rule, water samples shall be collected by the operator and tested during the application process. For all other family child care homes, water samples shall be collected by the operator and tested within 12 months of the effective date of this Rule;
- ~~(3) (2)~~ wash his or her hands prior to caring for children each day;
- ~~(4) (3)~~ ensure that each child's hands are washed upon arrival at the home each day;
- ~~(5) (4)~~ have sanitary toilet, diaper changing and hand washing facilities as follows:
 - (A) diaper changing areas shall be separate from food preparation areas;
 - (B) toileting areas shall have toilet tissue available at all times;
 - (C) all toilet fixtures shall be cleanable and in good repair;
 - (D) handwashing areas shall have soap and paper towels or other drying devices available at all times;
 - (E) diapering surfaces shall be smooth, intact, nonabsorbent and cleanable; and
 - (F) potty chairs and diapering surfaces shall be cleaned after each use.
- ~~(6) (5)~~ use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:
 - (A) gather all supplies before placing a child on the diapering surface;
 - (B) wash his or her hands before, as well as after, diapering each child;
 - (C) ensure the child's hands are washed after diapering the child; and
 - (D) place soiled diapers in a covered, leak proof container which is emptied and cleaned daily;
- ~~(7) (6)~~ use sanitary procedures when preparing and serving food. The operator shall:
 - (A) wash his or her hands before and after handling food and feeding the children; and
 - (B) ensure the child's hands are washed before and after the child is fed;
- ~~(8) (7)~~ wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily fluids;

1 ~~(9)~~ (8) handwashing procedures shall include:

2 (A) using liquid soap and water;

3 (B) rubbing hands vigorously with soap and water for 15 seconds;

4 (C) washing all surfaces of the hands, to include the backs of hands, palms, wrists, under
5 fingernails and between fingers;

6 (D) rinsing well for 10 seconds;

7 (E) drying hands with a paper towel or other hand drying device; and

8 (F) turning off faucet with a paper towel or other method without recontaminating hands;

9 ~~(10)~~ (9) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain
10 a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor
11 the temperature;

12 ~~(11)~~ (10) have a house that is free of rodents;

13 ~~(12)~~ (11) screen all windows and doors used for ventilation; and

14 ~~(13)~~ (12) store garbage in waterproof containers with tight fitting covers.

15 (b) If reusable, cloth diapers are used, place soiled cloth diaper, after disposing of feces in toilet without rinsing, in a
16 tightly closed plastic bag or other equivalent container approved by the Division, stored out of reach of children and
17 sent daily to the child's home to be laundered or to a laundry service.

18 (c) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness
19 of each child when toilet training. The operator shall provide assistance to each child to ensure proper hygiene, as
20 needed.

21 (d) The operator shall ensure that clean clothes are available in the event that a child's clothes become wet or soiled.
22 The change of clothing may be provided by the operator or by the child's parents.

23
24 *History Note: Authority G.S. 110-85; 110-88; 110-91; 143B-168.3;*

25 *Eff. October 1, 2017;*

26 *Amended Eff. November 1, 2023; September 1, 2019.*

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2204

DEADLINE FOR RECEIPT: November 9, 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:

On line 8, what are violations? Or violations of what?

*On line 8, do should be does, "that ~~do~~ **does** not meet".*

On line 9, who determines and how it is determined more than three months is needed to monitor for corrective action?

On line 15, what is "correction" referring to?

On line 17, what is "compliance history"?

On line 21, "pattern of noncompliance" is potentially vague. Who determines this and what are the standards?

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

1 **10A NCAC 09 .2204 is amended as published in 37:24 NCR 2218 as follows:**

2
3 **10A NCAC 09 .2204 PROVISIONAL CHILD CARE FACILITY LICENSE OR PROVISIONAL**
4 **NOTICE OF COMPLIANCE**

5 A provisional child care facility license or provisional notice of compliance may be issued to an operator for any
6 period of time not to exceed 12 months in accordance with the factors listed in 10A NCAC 09 .2201(b) for, among
7 other things, the following reasons:

- 8 (1) a substantiation of one or more violations as a result of a complaint that do not meet the criteria for
9 a maltreatment finding pursuant to G.S. 110-105.3(b)(3) but for which more than three months is
10 needed to monitor for corrective action implementation;
- 11 (2) to allow a time period for correcting a violation of the building, fire, or sanitation requirements;
- 12 (3) to allow a time period for remediation of an identified lead poisoning hazard as defined in G.S.
13 ~~130A-131.7(7)~~, 130A-131.7(7) or remediation of an asbestos hazard, regardless of whether a
14 provisional sanitation classification has been issued;
- 15 (4) to allow a time period for correction of an administratively dissolved corporation status from the
16 North Carolina Secretary of State;
- 17 (5) when the compliance history of the facility drops below the minimum requirement set forth in G.S.
18 110-90;
- 19 (6) change of location of a child care facility without proper notification to the Division as specified in
20 Rules 10A NCAC 09 .0204(b), .0403(a), and .1702(d); or
- 21 (7) pattern of noncompliance.

22
23 *History Note: Authority G.S. 110-88(6); 110-90; 110-99; 143B-168.3;*
24 *Eff. February 1, 2019;*
25 *Amended Eff. November 1, 2023; February 1, 2021.*

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2206

DEADLINE FOR RECEIPT: November 9, 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:

On line 17, what is a “disapproved sanitation classification”?

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

10A NCAC 09 .2206 is amended as published in 37:24 NCR 2218 as follows:

10A NCAC 09 .2206 SUSPENSION

A suspension of a license or suspension of a notice of compliance may be issued to an operator in accordance with the factors listed in 10A NCAC 09 .2201(b) for a time period not to exceed one year for the following reasons:

- (1) the operator of the child care facility is a corporate entity that has been placed under revenue suspension by the North Carolina Secretary of State;
- (2) when the Division has issued a provisional child care facility license or notice of compliance related to building, fire, or sanitation requirements and the operator has failed to comply;
- (3) to allow a specific time period for correcting a violation of building, fire, or sanitation requirements, provided that the appropriate inspector documents that closure of the child care facility is necessary to protect health or safety of children during correction; ~~or~~
- (4) when a facility is required to test for lead poisoning hazards as defined in G.S. 130A-131.7(7) or asbestos hazards or the Division has requested such testing to determine compliance with 10A NCAC 09 .0601(f) or 10A NCAC 09 .1707(2) and an operator has failed to test for lead poisoning hazards as defined in G.S. 130A-131.7(7) or asbestos hazards; or
- ~~(4)(5)~~ when a disapproved sanitation classification is issued to a child care facility.

The suspension of a child care facility license or suspension of a notice of compliance shall not be stayed during the pendency of an appeal.

*History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3;
Eff. July 1, 1988;
Amended Eff. April 1, 2001; November 1989;
Readopted Eff. February 1, 2019 (Transferred from 10A NCAC 09 .2205);
Amended Eff. November 1, 2023; February 1, 2021.*

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2209

DEADLINE FOR RECEIPT: November 9, 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:

On line 13, what is the standard for “a pattern” of noncompliance?

On line 14, if someone is “unable to comply” how would that support “willful noncompliance”?

*There is a grammar problem in item 4. On lines 17 and 18, I think you mean “**that** is hazardous to **the** health or”.*

On line 22, what is the standard for “hazardous”?

On line 23, what is a “disapproved sanitation classification”?

As written, the sentence on lines 30 and 31 about staying the revocation would only apply to the suspension for the reason in item 10. Is that the intent?

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

1 **10A NCAC 09 .2209 is amended as published in 37:24 NCR 2218-2219 as follows:**

2
3 **10A NCAC 09 .2209 REVOCATION OF A CHILD CARE FACILITY LICENSE OR AN ORDER TO**
4 **CEASE OPERATION**

5 Revocation of a child care facility license or an order to cease operation may be issued to an operator in accordance
6 with the factors listed in 10A NCAC 09 .2201(b) for the following reasons:

- 7 (1) child maltreatment has occurred in a child care facility and harm occurred as set forth in Rule
8 .2201(c)(2) of this Section;
- 9 (2) more than two determinations of child maltreatment have occurred at a child care facility within
10 three years;
- 11 (3) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 has
12 been willful or continual as evidenced by:
- 13 (a) a pattern of noncompliance, and the operator has not made efforts to correct repeated
14 violations or is unable to comply; or
- 15 (b) the operator has failed to comply with the terms of a corrective action plan issued with a
16 special provisional or probationary license or notice of compliance;
- 17 (4) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 is
18 hazardous to health or safety of children;
- 19 (5) the operator fails to comply with an implemented protection plan as set forth in G.S. 110-105.3(e);
- 20 (6) the operator falsifies information in violation of G.S. 110-91(14);
- 21 (7) the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-
22 90 and the conditions at the facility are hazardous to the health and safety of the children or staff;
- 23 (8) receipt of a disapproved sanitation classification that is not corrected with a superior or approved
24 sanitation classification within 12 months of issuance of a Suspension as set forth in Rule .2206 of
25 this Section; ~~or~~
- 26 (9) the operator of the child care facility is a corporate entity that has been placed under revenue
27 suspension from the North Carolina Secretary of State that has not been corrected within one year
28 of issuance of a Suspension as set forth in Rule .2206 of this ~~Section.~~ Section; or
- 29 (10) the Division has suspended the child care license or notice of compliance and the violation has not
30 been corrected after 12 months. The revocation of a child care facility license or a notice of
31 compliance pursuant to this Section shall not be stayed during the pendency of an appeal.

32
33 *History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3;*
34 *Eff. July 1, 1988;*
35 *Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989;*
36 *Readopted Eff. February 1, 2019 (Transferred from 10A NCAC 09 .2206);*
37 *Amended Eff. November 1, 2023; February 1, 2021.*

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2611

DEADLINE FOR RECEIPT: November 9, 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:

Applicable to multiple rules in the set: You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?

Why is a scope rule necessary?

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

10A NCAC 09 .2611 is adopted as published in 37:24 NCR 2211 as follows:

SECTION .2600 – MULTI-UNIT CHILD CARE CENTERS

10A NCAC 09 .2611 Scope

The rules in this Section apply to child care centers with multiple units, licensed individually, in one building. All rules within this Chapter shall apply except as provided in this Section.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
Eff. November 1, 2023.

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2612

DEADLINE FOR RECEIPT: November 9, 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:

Applicable to multiple rules in the set: You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?

The text of the rule cannot rely on the title to be meaningful because the title can be changed under different standards than rulemaking. Without the title, this rule doesn't say anything. See the OAH style guide for recommendations about how to format a definition rule.

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

10A NCAC 09 .2612 is adopted as published in 37:24 NCR 2211 as follows:

10A NCAC 09 .2612 Definition of Multi-Unit Child Care Centers

One building with multiple licensed units, each with a separate owner and entrance and each having its own physical and mailing address.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
Eff. November 1, 2023.

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2613

DEADLINE FOR RECEIPT: November 9, 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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

On line 4, what are the circumstances where more than one inspection would be required?

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

1 **10A NCAC 09 .2613 is adopted as published in 37:24 NCR 2211 as follows:**

2
3 **10A NCAC 09 .2613 Licensure**

4 The Division shall make one or more inspections to each unit within the building and issue individual licenses if all
5 applicable requirements of G.S. 110, Article 7, this Chapter, and this Section are met.

6
7 History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91; 110-105;
8 Eff. November 1, 2023.
9

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2614

DEADLINE FOR RECEIPT: November 9, 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:

Applicable to multiple rules in the set: *You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?*

On line 5, provide a precise cross-reference to the rule about staff/child ratios.

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

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2615

DEADLINE FOR RECEIPT: November 9, 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:

Applicable to multiple rules in the set: You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?

Is this rule for each individual unit? Or for the entire multi-unit building?

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

10A NCAC 09 .2615 is adopted as published in 37:24 NCR 2211 as follows:

10A NCAC 09 .2615 Staff/Child Ratios

The staff/child ratios and group sizes for children are as follows:

<u>Age of Children</u>	<u>Ratio Staff/Children</u>	<u>Maximum Group Size</u>
<u>0 to 12 Months</u>	<u>1/5</u>	<u>10</u>
<u>12 to 24 Months</u>	<u>1/6</u>	<u>12</u>
<u>2 to 3 Years</u>	<u>1/10</u>	<u>20</u>
<u>3 to 5 Years</u>	<u>1/15</u>	<u>25</u>
<u>5 Years and Older</u>	<u>1/25</u>	<u>25</u>

(1) when combining age groups, the staff/child ratio for the youngest child in the group shall be maintained for the entire group;

(2) when only one caregiver is required to meet the staff/child ratio and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties which are not direct child care responsibilities;

(a) The unit shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or

(b) There shall be a second adult on the premises who is available to provide emergency relief. This second adult may be a person in another licensed unit within the multi-unit center or support staff within the building.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;
Eff. November 1, 2023.

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

AGENCY: NC Child Care Commission

RULE CITATION: 10A NCAC 09 .2616

DEADLINE FOR RECEIPT: November 9, 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:

Applicable to multiple rules in the set: You use G.S. 110-85 in the authority note. This appears to be a legislative statement of purpose and not a grant of additional authority to the child care commission. How does this give you authority to adopt rules on the subjects covered in those rules?

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

1 10A NCAC 09 .2616 is adopted as published in 37:24 NCR 2212 as follows:

2
3 **10A NCAC 09 .2616 Provider Qualifications**

4 (a) The person who has the responsibility for administration of the program and planning and implementing daily
5 activities for the group of children in their care shall meet the requirements for an administrator and lead teacher as
6 outlined in G.S. § 110-91(8).

7 (b) When meeting enhanced standards, the person who has responsibility for administration of the program and
8 planning and implementing daily activities shall meet the lead teacher requirements outlined in 10A NCAC 09 .2819.

9 (c) When meeting enhanced standards, additional staff within the licensed unit shall meet lead teacher or teacher
10 requirements in Section .2800 of this Chapter as determined by their caregiving role.

11 (d) The person responsible for the administration of the program and program planning does not have to meet
12 administrative hours as required in 10A NCAC 09 .0714(a).

13
14 *History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;*

15 *Eff. November 1, 2023.*