

Burgos, Alexander N

Subject: FW: 02 NCAC 61 .0109

From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Sent: Tuesday, November 8, 2022 9:50 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Excellent news, thank you!

Anna R. Hayworth | Agricultural Programs Specialist
Office of the Assistant Commissioner of Consumer Protection
NC Department of Agriculture and Consumer Services
1002 Mail Service Center | Raleigh, NC 27699
Office: (984) 236-4509 (new office)
Cell: (919) 745-9356
anna.hayworth@ncagr.gov

Burgos, Alexander N

Subject: FW: 02 NCAC 61 .0109

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, November 7, 2022 5:06 PM
To: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Thank you for your email. It is my intention to recommend that the RRC approve the above captioned rule as amended.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Sent: Monday, November 7, 2022 4:40 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Mr. Peaslee,

See attached the suggested changes incorporated to the language for .0109. Let me know if there is anything additional you need.

Thank you!

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anna.hayworth@ncagr.gov

Burgos, Alexander N

Subject: FW: 02 NCAC 61 .0109

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, November 7, 2022 3:35 PM
To: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Please consider using the following language as neither the statute nor the applicable rule uses the term "label". They use "tag".

"(5) A physical sample of the tag which the applicant shall use as required by G.S. 106-65.99 and 02 NCAC 61 .0110 representing."

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Burgos, Alexander N

Subject: FW: 02 NCAC 61 .0109

From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Sent: Monday, November 7, 2022 2:48 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: 02 NCAC 61 .0109

Mr. Peaslee,

When someone applies for a sanitizer license and sends in the application, we review, issue the number, enter all the information in our licensing database, contact the applicant informing them of the license number, and place the license in Pending Status until we receive a physical sample of the law label to ensure information is correct and label material is of durable quality.

We generally allow 30 days for receipt of actual law label once notification of Pending Status.

Let me know if you have my additional questions. Thank you!

-Anna H

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Burgos, Alexander N

Subject: FW: 02 NCAC 61 .0109

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, November 7, 2022 2:17 PM
To: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Thank you for your reply.

If someone is applying for a license which they don't currently possess, how can they supply "the physical law label" for items to be sanitized that they have yet to receive pre-licensure? Does the agency intend that there is an ongoing duty to send in the labels post licensure?

Thank you in advance for your prompt reply.

William W. Peaslee
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Burgos, Alexander N

Subject: FW: 02 NCAC 61 .0109

From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Sent: Monday, November 7, 2022 1:00 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Good afternoon Mr. Peaslee,

The license enables the sanitation of any bedding or upholstered items during the period of licensure.

Let me know if you have any additional questions. Thank you!

Anna R. Hayworth | Agricultural Programs Specialist
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anna.hayworth@ncagr.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, November 4, 2022 5:36 PM
To: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Thank you for your email.

Allow me to re-phrase my question. Is the license to sanitize for specific individual items? Or is the license to sanitize on going for any items during a period of licensure?

William W. Peaslee
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1711 New Hope Church Road
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Burgos, Alexander N

Subject: FW: 02 NCAC 61 .0109

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, November 4, 2022 5:36 PM
To: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Thank you for your email.

Allow me to re-phrase my question. Is the license to sanitize for specific individual items? Or is the license to sanitize on going for any items during a period of licensure?

William W. Peaslee
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From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Sent: Friday, November 4, 2022 4:17 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Mr. Peaslee,

The physical law label that is affixed when the item is manufactured (i.e. new) can only be removed by the consumer. These law labels are white in color, I can provide a sample if needed for reference. When a piece of filled bedding etc. is sold as used (resale, cannot be sold as new) it is required to be sanitized prior to the sale by a licensed NC sanitizer. After the sanitizing process, it is then affixed with a yellow law label in addition to the original label to reflect that it has been sanitized. The manufacturer and the sanitizer are in most cases different entities.

If you have any additional questions, please don't hesitate to reach out.

Thank you!

Anna R. Hayworth | Agricultural Programs Specialist
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NC Department of Agriculture and Consumer Services

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anna.hayworth@ncagr.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, November 4, 2022 3:07 PM
To: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Just so I'm clear, when a business is filing an application to be able to perform the sanitization of bedding, etc., the business must first remove the physical law label from each piece of filled bedding, etc. that the business will sanitize and send it in with the application? What about the labels for bedding etc. received after the business has received the license?

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From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Sent: Friday, November 4, 2022 1:43 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 02 NCAC 61 .0109

Good afternoon Mr. Peaslee,

My apologies for the confusion regarding Line 30 .0109, we have cleaned that section up, it was a mistake on my end. Final language is attached.

Regarding your other inquires:

In line 12: What is a "physical law label"? Will people in the regulated public know what this is?

Yes, filled bedding, furniture, sleeping bags and toys sold in the USA require a special label. These labels must meet specific requirements. The regulated community know and affix law labels in the manufacture of these items.

In Line: 13: What is the "Uniform Registration Number certificate"? Will people in the regulated public know what this is?

Yes, a uniform registration number system exists for the benefit of bedding and upholstered furniture manufacturers that sell products in the United States. This allows for only one registration number to be listed on the law label

covering multiple states. All states either require or allow a state registration number to be printed on the law label. All states accept or have formally adopted the Uniform Registry Number System.

Please let me know if you have any additional questions or concerns. Thank you!

Anna R. Hayworth | Agricultural Programs Specialist

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NC Department of Agriculture and Consumer Services

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Send Attach Encrypt Discard ...

fw: request for changes 02 NCAC .0101, .0102, .0104, .0106, and .0111

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, November 2, 2022 12:47 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>
Cc: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Subject: RE: Request for changes 02 NCAC .0101, .0102, .0104, .0106, and .0111

Hi Alex,

Please be advised that it is my intention to recommend that the RRC approve the above captioned rules.

Rule .0109 remains under consideration.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Rich text editor toolbar with options for font (Calibri), size (11), bold, italic, underline, text color, background color, link, unlink, bulleted list, numbered list, indent, outdent, quote, and a Discard button.

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02 NCAC 61 .0102.docx 48 KB	02 NCAC 61 .0104.docx 46 KB
02 NCAC 61 .0106.docx 46 KB	02 NCAC 61 .0109.docx 49 KB
02 NCAC 61 .0111.docx 46 KB	

From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Sent: Wednesday, November 2, 2022 7:05 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Request for changes 02 NCAC .0101, .0102, .0104, .0106, .0109, and .0111

Good afternoon,

Please find attached the requested technical changes, as well as further information requested in the original document. Please let me know if you need anything additional.

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**Request for Changes Pursuant to
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

The imposition of a question implies that the rule as written is unclear or there is some ambiguity. If the request includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for consideration which the agency may find preferable and clarifying.

To properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: "~~a~~Association"
 - Right: "~~association~~ Association"
6. Treat punctuation as part of a word. For example:
 - Wrong: "day, ~~and~~"
 - Right: "~~day,~~ day, and"
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

William W. Peaslee
Commission Counsel

Date submitted to agency: 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

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:

*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. **Changes completed.***

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .101

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. As the only term defined in in Rule which appears in the Bedding Law is “person,” and none of the other terms appear in the language of the law, it is the belief of the agency that it is more appropriate to have them defined in this rule.

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

Page 1, Lines 7 and 8: Is the disinfectant registered by the EPA or with the EPA? Registered pursuant to what? Per 7 U.S.C. §136 et seq. (1996): The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides for federal regulation of pesticide distribution, sale, and use. All pesticides distributed or sold in the United States must be registered (licensed) by EPA.

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. Changes completed.

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. Changes completed.

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

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .102

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. [Changes completed.](#)

Consider: Adopting the definition of “bedding” as provided in G.S. 106-65.95 and using this term for purposes of sanitization. [From the Bedding Law, the current definitions are as follows: “Bedding” means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow, decorative pillow, and any other padded or stuffed item designed to be or commonly used for reclining or sleeping. This definition includes dual purpose furniture such as studio couches and sofa beds. The term “mattress” does not include waterbed liners, bladders or cylinders unless they contain padding or stuffing. The term “mattress” also does not include quilts and comforters made principally by hand sewing or stitching in a home or community workshop. Given this, the agency does not believe additional language is necessary for this rule as written.](#)

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.” [Changes completed.](#)

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

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.” Changes completed.

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

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? Changes completed.

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

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. Changes completed.

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.” Changes completed.

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

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .104

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". **Changes completed.***

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

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

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

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

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .106

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 6: Change "must" to "shall". Changes completed.

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"? Changes completed.

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

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

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .109

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, (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. [Changes completed.](#)

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. [See response below.](#)

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? [See response below.](#)

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? [There is no specific format for verification beyond the number of units reported in compliance with section \(b\) of this rule and signature of the reporting party. Our "reason to believe" the number of bedding units sold may be inaccurate may be based upon review of an applicant's prior years' licensing submissions, or documentation from compliance monitoring inspections in North Carolina channels of trade.](#)

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

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

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

Page 1, Line 21, (c): What “option” is available under G.S. 106-65(b)? This piece is reflected in lines 34 and 35. As per 106-65.103(b), the option of obtaining an initial license at a prorated amount is no longer available because the person has done business and obtained a license as described in 106-65.103(a) during the preceding calendar year.

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? Changes completed.

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

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

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0111

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 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? [Changes completed.](#)

Page 1, Line 5: Define or delete “easily”. [Changes completed.](#)

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”. [Changes completed.](#)

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? [Changes completed.](#)

Page 1, Line 10: “Unit” should be plural. [Changes completed.](#)

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

1 02 NCAC 61 .0101 is amended as published in 36:20 NCR 1607 as follows:

2
3 **CHAPTER 61 - SANITATION OF BEDDING**

4
5 **02 NCAC 61 .0101 DEFINITIONS**

6 The following definitions shall apply throughout ~~these Rules;~~ the rules of this Chapter:

7 (1) “Chemical Method” means a process accomplished by application of a disinfectant registered by
8 the U.S. Environmental Protection Agency under 7 U.S.C. Chapter 125 SEC. 3. [136a] of the
9 Federal Insecticide, Fungicide, and Rodenticide Act, and labeled as a disinfectant for bedding.

10 ~~(2)~~ (2) “Chief Financial Officer” means the officer or employee with primary bookkeeping responsibility
11 for a business that manufactures, manufactures, or sanitizes, sanitizes, sells, sells, or offers to sell
12 bedding in this State, State, or manufactures, and sells or offers to sell, bedding to be sold in this
13 state.

14 (3) “Division” means the Structural Pest Control and Pesticides Division of the N.C. Department of
15 Agriculture and Consumer Services.

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

18 ~~(5)~~ (5) “Person” means an individual, corporation, company, partnership, or other legal entity.

19
20 *History Note: Authority G.S. 106-65.107;*
21 *Eff. April 1, 1984;*
22 *Amended Eff. January 1, 1988;*
23 *Transferred from 15A NCAC 18B .0201 Eff. May 1, 2012;*
24 *Readopted Eff. January 1, 2021;*
25 *Amended Eff. December 1, 2022.*

1 02 NCAC 61 .0102 is amended as published in 36:20 NCR 1607-1608 as follows:

2
3 **02 NCAC 61 .0102 AUTHORIZED SANITIZING PROCESSES**

4 ~~(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.~~

12 ~~(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.~~

14 ~~[(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:]~~

16 ~~(a) Sanitization pursuant to G.S. 106-65.95 shall be done by one of three methods provided in the Rule: the dry heat process, the chemical method, or the washing process.~~

18 ~~(b) 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:~~

20 ~~(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.]~~

26 ~~(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~~

28 ~~(1) To be sanitized by the dry heat method, all items to be sanitized shall be placed upon 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.~~

34 ~~[(3)(2) A thermometer [that has been checked for accuracy] accurate to within one-degree Fahrenheit [must] shall be placed within the chamber [at a point(s) where it can always be easily read to determine the temperature accuracy of the equipment.] during each dry heat process. The thermometer shall be visible and checked every 15 minutes by the operator of the chamber to ensure~~

1 the chamber maintains the temperature set forth in Subparagraph (b)(1) of this Chapter. Should the
2 temperature fall below 230 degrees during the process, the dry heat process shall re-start for an
3 additional two hours.

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

10 (c) No product shall be used in a manner inconsistent with its labeling or instructions in the sanitization process.

11 (d) The chemical method of sanitizing is authorized if performed in accordance with the requirements of this rule.
12 Only those products evaluated and registered by the United States Environmental Protection Agency ('EPA') and the
13 Division, as approved for use as disinfectants of articles of bedding shall be used. The product used must clearly state,
14 on the label or on printed materials included on each container or package, detailed instructions for its use in
15 disinfecting articles of bedding. No person shall use an unregistered product or use a registered product in a manner
16 inconsistent with its labeling or these rules in the sanitization process.

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

19 (e) In the washing process, the bedding shall be boiled for two hours with a soap or detergent. The product is
20 considered sanitized after drying, and the bedding shall be free from dirt, marks, stains, or other offensive odors or
21 materials.

22
23 *History Note: Authority G.S. 106-65.107;*
24 *Eff. April 1, 1984;*
25 *Amended Eff. January 1, 1985;*
26 *Transferred from 15A NCAC 18B .0202 Eff. May 1, 2012;*
27 *Readopted Eff. January 1, 2021.*
28 *Amended Eff. December 1, 2022.*

1 02 NCAC 61 .0104 is adopted as published in 36:20 NCR 1608 as follows:

2

3 **02 NCAC 61 .0104 RECORDKEEPING FOR SANITIZATION**

4 (a) A person who sanitizes as defined by G.S. 106-65.95(7), previously used material or bedding shall keep a record
5 of the kind of material and bedding which has been sanitized, that is available for inspection by the
6 Division, sanitized.

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

9 (c) The record shall include the following:

10 (1) the date of sanitization;

11 (2) the sanitization method used;

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

13 (4) the unit number of bedding articles sanitized;

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

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

17

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

19 *Eff. December 1, 2022.*

1 02 NCAC 61 .0105 is amended as published in 36:20 NCR 1608 as follows:

2

3 **02 NCAC 61 ~~[.0106].0105.0106~~ STORAGE OF SECONDHAND OR PREVIOUSLY-USED MATERIALS**

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

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

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

11

12 *History Note: Authority G.S. 106-65.98; 106-65.107;*

13 *Eff. April 1, 1984;*

14 *Transferred from 15A NCAC 18B .0205 Eff. May 1, 2012;*

15 *Readopted Eff. January 1, 2021.*

16 *Amended Eff. December 1, 2022.*

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

02 NCAC 61 [.0109].0108.0109 LICENSE FEES AND APPLICATIONS

(a) Applications for a license shall be on a form provided by the Division and shall ~~include~~contain 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 license;~~
- (4) the type of bedding ~~items~~units the business ~~manufactures~~manufactures, sanitizes or renovates;
- (5) the physical law label (which shall not include paper, photo, or electronic copies);
- (6) the current copy of the Uniform Registration Number certificate from the issuing state;
- (7) the signature of Chief Financial Officer.

(b) In addition to the information required in paragraph (a) of this Rule, renewal applications shall also contain the following information:

- (1) the number of bedding units manufactured in North Carolina, but not sold in North Carolina;
- (2) the number of bedding units manufactured in North Carolina and sold in North Carolina;
- (3) the number of bedding units manufactured outside of North Carolina, or the United States, and sold in North Carolina;
- (4) Number of bedding units sanitized or renovated in North Carolina.

~~(b)~~(c) 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, based upon its review of an applicant's prior years' licensing submissions, or documentation from its compliance monitoring inspections 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)~~(d) License renewal 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.~~operation. Application forms for making the determination of fee payment owed or refunded shall be furnished by the ~~Division.~~Division and shall include the information contained in paragraph (a) of this Rule. 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~~request~~ for a refund for the remainder of the calendar year upon

1 providing ~~verified proof~~ of the number of the bedding units sold or manufactured in North Carolina during the
2 operating portion of the calendar year-year as verified in writing by the Chief Financial Officer.
3 [(e) All forms may be obtained from the Division at www.ncagr.gov/SPCAP/Sleep/beddinglicense.htm.]

4

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

1 02 NCAC 61 .0110 is amended as published in 36:20 NCR 1609 as follows:

2

3 **02 NCAC 61 ~~[.0111].0110~~,0111 DURABLE MATERIALS FOR TAGS**

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

11

12 *History Note: Authority G.S. 106-65.99; 106-65.107;*

13 *Eff. April 1, 1984;*

14 *Amended Eff. January 1, 1988;*

15 *Transferred from 15A NCAC 18B .0210 Eff. May 1, 2012;*

16 *Readopted Eff. January 1, 2021;*

17 *Amended Eff. December 1, 2022.*

Reply all Delete Report ...

02 NCAC 61 .0101, .0102, .0104, .0106, .0109, .0111

PW

Peaslee, William W
To: Hayworth, Anna
Cc: Burgos, Alexander N

Like Reply Reply all Forward ...

Wed 11/2/2022 5:43 AM

Good afternoon,

Please submit the responses to the Request for Changes dated August 31, 2022 concerning the above captioned rules no later than 5:00 pm November 8, 2022.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Reply Reply all Forward

Burgos, Alexander N

To: Duke, Lawrence
Subject: RE: Request for Changes 02 NCAC 52B .0212 and .0214

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Tuesday, October 18, 2022 11:47 AM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: Request for Changes 02 NCAC 52B .0212 and .0214

FYI:

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Sent: Wednesday, October 12, 2022 4:25 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>
Subject: RE: Request for Changes 02 NCAC 52B .0212 and .0214

Good afternoon Mr. Duke,

Attached are the requested technical changes, as well as the explanations requested in the original document. Please let me know if you need anything additional.

Anna R. Hayworth | Agricultural Programs Specialist
Office of the Assistant Commissioner of Consumer Protection
NC Department of Agriculture and Consumer Services
1002 Mail Service Center | Raleigh, NC 27699
Office: (984) 236-4509 (new office)
Cell: (919) 745-9356
anna.hayworth@ncagr.gov

**Request for Changes Pursuant to
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

The imposition of a question implies that the rule as written is unclear or there is some ambiguity. If the request includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for consideration which the agency may find preferable and clarifying.

To properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: "~~a~~Association"
 - Right: "~~association~~ Association"
6. Treat punctuation as part of a word. For example:
 - Wrong: "day, ~~and~~"
 - Right: "~~day,~~ day, and"
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

William W. Peaslee
Commission Counsel

Date submitted to agency: August 31, 0222

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 52B .0212

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: G.S. 106-317 grants the Board authority to “establish a system of health certificates and permits for the better protection of swine and livestock.” Explain the agency’s authority to regulate other animals. Is there a definition of livestock by statute or code? Is a skunk “livestock”? Are camelids, elephants, or “any other species or hybrid of a mammal” livestock? The Board has a historically recognized authority to require health certificates for the importation any animal into the State that poses a risk of disease to swine, poultry, or livestock within the State. This authority is not limited to regulating the importation of swine or livestock. G.S. 106-317 states “The North Carolina Board of Agriculture under the authority of this section may by regulation establish a system of health certificates and permits for the better protection of the swine and livestock of this State.” This authority to require health certificates is not limited to requiring the permits for “swine and livestock,” but instead requires only that this system of health certificates be “for the better protection of swine and livestock.” Therefore, the Board has authority to require a health certificate or permit on *any* animal entering the state that may pose a risk of infectious disease and threaten the swine and livestock industries. This authority is both well established and critical to protecting both the essential food sources and economic benefits to the State represented by these industries.*

The Board’s authority to promulgate rules to eradicate and prevent animal disease in the State by limiting or restricting the import of animal into the State is well established. This rule addressing the importation of wild animals was adopted in 1984, with subsequent amendments in 1992, 1996, and 1998, as well as approved temporary and permanent amendment in 2002.

G.S. 106-348 states that “The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to control and eradicate tuberculosis.”

William W. Peaslee
Commission Counsel

Date submitted to agency: August 31, 0222

G.S. 106-361 states that “The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to complete tick eradication in North Carolina.”

G.S. 106-388 states that “It is hereby declared that the disease of animals known as brucellosis, or Bang's disease, is of an infectious and contagious nature, and animals affected with, or exposed to, or suspected of being carriers of the disease, shall be subject to quarantine and the rules and regulations of the Department of Agriculture and Consumer Services.”

G.S. 106-396 states that “The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of G.S. 106-388 to 106-398, and for the effective control and eradication of brucellosis, including the establishment of fees and charges for the collection of blood samples.”

G.S. 106-405.17 states that “The State Board of Agriculture shall have full power to promulgate and enforce such rules and regulations as it deems necessary for the control and eradication of equine infectious anemia.”

Generally, to the Rule: The agency is empowered to establish a system of health certificates and permits for the better protection of the swine and livestock of this State. Accordingly, the agency can set the standards for permit issuance. Explain the agencies authority to prohibit conduct outside the context of permit issuance. The proposed rule deals solely with the conditions necessary for obtaining a health certificate or permit for importation of these animals and is thus within the referenced authority of the Board. However, the Board has broad authority to regulate conduct beyond this permit system in order to control and eradicate animal disease in the State as set forth in the above referenced statutes.

Generally, to the Rule: Explain the agency's authority to regulate wild animals. The Board has broad authority to regulate conduct to control and eradicate animal disease in the State as set forth above.

Notably, G.S. 106-400 further speaks to the State Veterinarian's authority to prohibit animal movement in order to control animal disease with regards to “any animal.” This statute also states this authority is “in accordance with the provisions of the permit,” further supporting the Board's authority to regulate the importation of any animal capable of bringing/spreading disease in the State by requiring the owner to obtain a health certificate.

Generally, to the Rule: What is the permit application process? Is that codified? The “Official Health Certificates: Permits” requirements and process is set forth in 02 NCAC 52B .0202. Throughout Chapter 02, Title 52, Subchapter B, specific animal requirements are set forth with regards to permits.

Page 1, Line 10: In paragraph (a) subparagraph (5), is “bobcat” otherwise ambiguous without the parenthetical? Can a more comprehensive list be made? The use of the word

William W. Peaslee
Commission Counsel

Date submitted to agency: August 31, 0222

“includes” suggests there are others which are not listed. Would the use of “felines” and “etc.” include household cats? Additionally, in order to create a proper clause, place a comma after felines and add “such as.” Changes completed.

Page 1, Line 16, (b): Shouldn't the sentence beginning “Furthermore...” be its own paragraph? Is the agency any addressing any wild animals listed in (a) or all wild animals? How must the applicant “show” compliance? This language was modified as reflected in the final document so that the applicant no longer has to show NCDA&CS compliance with NCWRC rules to obtain the permit. However, it is still strongly believed that this language is necessary to avoid confusion. While an agency is prohibited from adopting a rule that “repeats the content of a law, a rule, or a federal regulation under G.S. 150B-19(4), “(a) brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the ‘reasonably necessary’ standard.”

This rule is reasonably necessary because a person could logically believe that because they obtained a permit for the importation of a wild animal from NCDA&CS they had done everything they need to do. This language expressly calls their attention to the fact that there are likely additional requirements with another State agency. NCWRC supports the inclusion of this language. The inclusion of this language is also consistent with the directive of G.S. 150B-19.1(d) stating “(e)ach agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.”

Page 1, Lines 19-32, (c): The paragraph applies to “camelids, bison, and other Bovidae other than domestic cattle, yet the last sentence then states that the requirements of this paragraph shall not apply to camelids. Which is it? This is facially unclear and ambiguous. The requirements of the paragraph do not apply to a camelid if it has an official health certificate AND is from an area that is tuberculosis Accredited-Free and brucellosis Certified-Free.

*Page 1, Lines 35-37: What is an “imported” elephant? Aren't all elephants imported? What is an “official” health certificate? How long must the certificate accompany the elephant? An “imported elephant” is an elephant that is entering the State, meaning one that is not already in the State pursuant to a valid health certificate. An official health certificate and their expiration dates are set forth in 02 NCAC 52B .0202. G.S. 106-348 specifically states that “The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have **full power** to promulgate and enforce such rules and regulations as may be necessary to control and eradicate tuberculosis.”*

Page 1, Line 33, (d): Explain the agency's authority to regulate “any species or hybrid of mammal” which arguably would include humans. The Board has broad authority to regulate conduct to control and eradicate animal disease in the State as set forth above. The term “Veterinary”, by default, excludes humans. No agency or individual

William W. Peaslee
Commission Counsel

Date submitted to agency: August 31, 0222

would require a certificate of *veterinary* inspection for humans attempting to enter the State.

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

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 52B .0214

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: Explain the agency's authority to regulate or issue permits regarding rabbits. Are rabbit's livestock? If so, where is this defined? Rabbits are a defined species definable through well-established taxonomy standards. The main amendment to the rule it to further clarify any ambiguity by indicating that this includes any species in the order of Lagomorpha, including hare and pika. This is a well-defined and understood standard for the regulated public.

The Board has a historically recognized authority to require health certificates for the importation any animal into the State that poses a risk of disease to swine, poultry, or livestock within the State. This authority is not limited to regulating the importation of swine or livestock. G.S. 106-317 states "The North Carolina Board of Agriculture under **the authority of this section may by regulation establish a system of health certificates and permits** for the better protection of the swine and livestock of this State." This authority to require health certificates is not limited to requiring the permits for "swine and livestock," but instead requires only that this system of health certificates be "for the better protection of swine and livestock." Therefore, the Board has authority to require a health certificate or permit on *any* animal entering the state that may pose a risk of infectious disease and threaten the swine and livestock industries. This authority is both well established and critical to protecting both the essential food sources and economic benefits to the State represented by these industries.

The Board's authority to promulgate rules to eradicate and prevent animal disease in the State by limiting or restricting the import of animal into the State is well established. The Board's ability to adopt a rule addressing the importation of rabbits was recently recognized as an emergency rule in July 2021 and as a temporary rule in September 2021.

William W. Peaslee
Commission Counsel

Date submitted to agency: August 31, 0222

G.S. 106-348 states that “The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to control and eradicate tuberculosis.”

G.S. 106-361 states that “The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to complete tick eradication in North Carolina.”

G.S. 106-388 states that “It is hereby declared that the disease of animals known as brucellosis, or Bang's disease, is of an infectious and contagious nature, and animals affected with, or exposed to, or suspected of being carriers of the disease, shall be subject to quarantine and the rules and regulations of the Department of Agriculture and Consumer Services.”

G.S. 106-396 states that “The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of G.S. 106-388 to 106-398, and for the effective control and eradication of brucellosis, including the establishment of fees and charges for the collection of blood samples.”

Notably, G.S. 106-400 further speaks to the State Veterinarian’s authority to prohibit animal movement in order to control animal disease with regards to “any animal.” This statute also states this authority is “in accordance with the provisions of the permit,” further supporting the Board’s authority to regulate the importation of any animal capable of bringing/spreading disease in the State by requiring the owner to obtain a health certificate.

G.S. 106-405.17 states that “The State Board of Agriculture shall have full power to promulgate and enforce such rules and regulations as it deems necessary for the control and eradication of equine infectious anemia.”

‘Cuniculture’ is the agricultural practice of breeding and raising domestic lagomorphs as livestock for their meat, fur, or wool. This is similar to the practice of raising Captive Cervid species as separate from their wild counterparts. At NCDA&CS we have historically handled and will continue to handle domesticated lagomorphs for food and fiber in the same way we handle our long-standing Captive Cervid farms; as livestock as fitting with the definition provided in NC G.S. § 68-15. This is a practice that is followed by our neighboring states of GA, SC, and TN who have had positive cases of RHDV2.

a. Chapter 68 Article 3 Livestock Law

§ 68-15. Term "livestock" defined.

The word "livestock" in this Chapter shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats, llamas, and swine. (Code, s. 2822; Rev., s. 1681; C.S., s. 1841; 1971, c. 741, s. 1; 1997-84, s. 2.)

<https://www.agr.georgia.gov/rabbit-hemorrhagic-disease-virus-update.aspx>

William W. Peaslee
Commission Counsel

Date submitted to agency: August 31, 0222

<https://news.clemson.edu/rabbits-in-greenville-county-diagnosed-with-rabbit-hemorrhagic-disease/>
<https://www.tn.gov/agriculture/news/2022/1/28/rabbit-disease-confirmed-in-tennessee.html>

The term ‘rabbits’ are commonly used to describe all Lagomorphs, although using ‘rabbits’ in this way misleading. There are several varieties of domesticated Lagomorphs. Although the vast majority of these are true rabbits, there are other species such as hares and picas that are left out scientifically unless the term Lagomorph is used. The language change suggested was to clarify the language to be more scientifically accurate and to avoid confusion by the public.

Page 1, Line 7-13, (a)(1) & (2): Detected by whom? How would one check? Or is this based upon actual knowledge of the importer? The requirement is for the importer to determine if the animal(s) they are attempting to bring into the State has originated from an area where the disease has been present or if the animal(s) have come in contact with the disease. Information as to the RHDV-2 detections is readily available on the USDA website or by contact USDA directly and it is a reasonable requirement for the importer to be required to determine if there was potential exposure and thus an import permit is required.

Page 1, Line 14-28, (b): What is an “official” health certificate? Who issues the certificate? Are there any protocols prior to the issuance of the certificate or can one be issued without an examination? If an examination is required, what kind of examination? The “Official Health Certificates: Permits” requirements and process is set forth in 02 NCAC 52B .0202.

NCDA&CS has always identified rabbits as livestock, as they provide the public a source of food and fiber and their populations are subject to infectious diseases that need to be controlled in the state; domesticated rabbits do not fall under any other state agency's regulatory authority. Additionally, domestic rabbits are similarly handled as livestock in other states such as TN, GA, and SC. This is known through these states handling of RHDV-2 when it was identified in those states.

Page 1, Lines 20-26, (c)(1): Why is this language necessary? Also, please note the (i) should be (1). Changes completed.

Page 2, Line 1: (ii) should be (2). Changes completed.

Page 2, Line 2: Consider further definition of “temporary”. “Temporary” is defined within the same sentence of the proposed language as “lasting only until the end of the veterinary service visit, and the animal is brought directly to the veterinary clinic and departs from the veterinary clinic to the originating state with no intervening stops.”

Page 2, Lines 9-10: By “documentation required for importation” does the agency mean any federally required documentation? If so, is there part of the United States Code to which a referral can be made? If not federally required documentation, to what

William W. Peaslee
Commission Counsel

Date submitted to agency: August 31, 0222

documentation does the agency refer? States do not have the authority to allow animals from other countries into the United States without the USDA first approving the international transportation. USDA paperwork and requirements for testing is different depending on the species and the country of origin. After USDA has approved importation into the USA, then a state may have additional requirements that need to be met.

<https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/live-animal-imports>

<https://www.ecfr.gov/current/title-9/chapter-I/subchapter-D/part-93>

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: August 31, 0222

02 NCAC 52B. 0214 is adopted with changes as published in 36:22 NCR 1775-1776 as follows:

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

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

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

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

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

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

- ~~(1)~~ direct shipment of a rabbit [rabbit, or any species in the order of Lagomorpha, including hare and pika], from a country or state without RHDV 2 or if the rabbit [animal] makes intervening stops only in countries or states without RHDV 2, the rabbit [animal] is not commingled or exposed to another rabbit [animal in the order of Lagomorpha] not shipped directly from the point of origin together, and the rabbit [animal] is not exposed to materials such as cages, beddings, and supplies

1 ~~that have been in contact with another rabbit [animal in the order of Lagomorpha] not shipped~~
2 ~~directly from the point of origin together. [together; or]~~
3 ~~(2) rabbits, or any species in the order of Lagomorpha, including hare and pika, brought into the State~~
4 ~~on a temporary basis for the sole purpose of seeking veterinary services by a North Carolina licensed~~
5 ~~veterinarian, lasting only until the end of the veterinary service visit, and the animal is brought~~
6 ~~directly to the veterinary clinic and departs from the veterinary clinic to the originating state with~~
7 ~~no intervening stops.]~~

8 (d) The application for ~~rabbit~~ a importation shall include the state of origin, health certificate inspection date, the
9 owner's name, address, and phone number at the time of import, the import destination within the State of North
10 Carolina, the name, address, and phone number of the person with control and responsibility over the ~~rabbit~~ animal at
11 the import destination, and any federal licensing, permit, and documentation required for the importation of the ~~rabbit~~
12 animal if imported from outside of the United States of America.

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

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

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

20
21 *History Note: Authority G.S. 106-317;*
22 *Eff. December 1, 2022.*

02 NCAC 52B .0212 is amended with changes as published in 36:19 NCR 1522-1533 as follows:

02 NCAC 52B .0212 IMPORTATION REQUIREMENTS: WILD ANIMALS

(a) A person shall obtain a permit from the State Veterinarian before importing any of the following animals into this State:

- (1) Skunk;
- (2) Fox;
- (3) Raccoon;
- (4) Ringtail;
- (5) ~~Bobcat (includes Lynx and other~~ North and South American ~~felines as cougars, jaguars, etc.);~~ felines;
- (6) ~~Coyote;~~
- (7) Marten;
- (8)(7) Brushtail Possum (*Trichosurus vulpecula*).

(b) Permits for the importation into this State of any of the animals listed in Paragraph (a) of this Rule shall be issued only if the animal(s) will be used in a research institute, or for exhibition by a USDA licensed exhibitor, or organized entertainment as in zoos or circuses.

~~(c) [Furthermore, permits for the importation of wild animals, as defined in G.S. 113-129, shall be issued only if the applicant shows compliance with applicable North Carolina Wildlife Resources Commission rules in 15A NCAC 10H .1400.]~~ Nothing in the permit requirements for the importation of wild animals, as defined by G.S. 113-129 and as set forth in this Subchapter, shall excuse or exempt the applicant from compliance with applicable North Carolina Wildlife Resource Commission rules in 15A NCAC 10B .0100 or 15A NCAC 10H .1400.

~~(d)~~ (d) Camelids, bison, and other bovidae other than domestic cattle may be imported into the State if accompanied by an official health certificate issued by a licensed, accredited veterinarian, as defined in 02 NCAC 52B .0401, which states that:

- (1) all animals six months of age or older have tested negative for brucellosis within 30 days prior to importation; and
- (2) all animals six months of age or older have tested negative for tuberculosis within 60 days prior to importation; and
- (3) the herd of origin has had no brucellosis or tuberculosis diagnosed within the past 12 months.

(e) Additionally, all bison and other bovidae other than domestic cattle may be imported into the State only if officially identified in accordance with 9 CFR 86.1, which shall be incorporated by reference, including any subsequent amendments and editions, and can be obtained free of cost at https://www.ecfr.gov/cgi-bin/text-idx?SID&node=pt9.1.86&rgn=div5#se9.1.86_11. The requirements of this Paragraph shall not apply to camelids, llamas, vicunas, alpacas, and guanacos from other states that are tuberculosis Accredited-Free and brucellosis Certified-Free, when accompanied by an official health certificate.

~~(d)~~ (f) Any species or hybrid of a mammal not otherwise covered in the Administrative Code ~~that is found to exist in the wild or naturally occurs in the wild~~ must be accompanied by a valid certificate of veterinary inspection.

1 ~~(e)~~(g) Imported elephants shall be accompanied by an official health certificate issued by a licensed, accredited
2 ~~veterinarian,~~ veterinarian for the duration of the certificate in North Carolina, as defined in 02 NCAC 52B .0401,
3 which states that “all animals have tested negative for tuberculosis within 365 days prior to importation.”
4

5 *History Note: Authority G.S. 106-317; 106-400;*
6 *Eff. April 1, 1984;*
7 *Amended Eff. July 1, 1998; February 1, 1996; May 1, 1992;*
8 *Temporary Amendment Eff. February 18, 2002;*
9 *Temporary Amendment Expired August 1, 2002 (See Rule .0213);*
10 *Amended Eff. August 1, 2002;*
11 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 26,*
12 *2017;*
13 *Amended Eff. December 1, 2022.*

Burgos, Alexander N

From: Peaslee, William W
Sent: Friday, September 16, 2022 10:34 AM
To: Hayworth, Anna
Cc: Burgos, Alexander N
Subject: Extension letter
Attachments: 09.2022 Agriculture Extension Letter.pdf

Good morning,

Attached please find the notice of extension pursuant to G.S. 150B-21.13 from yesterday's RRC meeting.

As always, if you have any questions please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: Request for Changes 02 NCAC 52B .0212 and .0214

From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Sent: Friday, September 2, 2022 12:52 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Request for Changes 02 NCAC 52B .0212 and .0214

Good afternoon Mr. Peaslee,

We would like to request an extension to allow more time to review and make the technical changes requested for these rules as well, given the short turnaround time.

Thank you, and let me know if you need anything additional from me for the extension requested.

Anna R. Hayworth | Agricultural Programs Specialist
Office of the Assistant Commissioner of Consumer Protection
NC Department of Agriculture and Consumer Services
1002 Mail Service Center | Raleigh, NC 27699
Office: (984) 236-4509 (new office)
Cell: (919) 745-9356
anna.hayworth@ncagr.gov

Burgos, Alexander N

Subject: FW: Request for changes 02 NCAC .0101, .0102, .0104, .0106, .0109, and .0111

From: Hayworth, Anna <Anna.Hayworth@ncagr.gov>

Sent: Friday, September 2, 2022 10:52 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Request for changes 02 NCAC .0101, .0102, .0104, .0106, .0109, and .0111

Good morning Mr. Peaslee,

We would like to request an extension to allow more time to review and make the technical changes requested for these rules. As we received the request on September 1st at 4pm, I do not believe that we will have adequate time to prepare a response with corrections by the deadline indicated.

Thank you, and let me know if you need anything additional from me for the extension requested.

Anna R. Hayworth | Agricultural Programs Specialist

Office of the Assistant Commissioner of Consumer Protection

NC Department of Agriculture and Consumer Services

1002 Mail Service Center | Raleigh, NC 27699

Office: (984) 236-4509 (new office)

Cell: (919) 745-9356

anna.hayworth@ncagr.gov

Burgos, Alexander N

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Cell: (919) 745-9356
anna.hayworth@ncagr.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, August 31, 2022 11:38 AM
To: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Request for Changes 02 NCAC 52B .0212 and .0214

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the North Carolina Board of Agriculture for the September 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, September 15, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on September 9, 2022.

In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Hayworth, Anna
Sent: Friday, September 2, 2022 10:52 AM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: RE: Request for changes 02 NCAC .0101, .0102, .0104, .0106, .0109, and .0111

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NC Department of Agriculture and Consumer Services
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Cell: (919) 745-9356
anna.hayworth@ncagr.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, September 1, 2022 4:03 PM
To: Hayworth, Anna <Anna.Hayworth@ncagr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Request for changes 02 NCAC .0101, .0102, .0104, .0106, .0109, and .0111

Good afternoon,

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In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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