

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?

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.

Generally, to the Rule: Explain the agency’s authority to regulate wild animals.

Generally, to the Rule: What is the permit application process? Is that codified?

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 “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.”

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?

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.

William W. Peaslee
Commission Counsel

Date submitted to agency: August 31, 0222

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?

Page 1, Line 33, (d): Explain the agency’s authority to regulate “any species or hybrid of mammal” which arguably would include humans.

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. 0212 is adopted 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.);
- (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. 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.

(c) 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.

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) 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.

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

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

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 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 rabbits livestock? If so, where is this defined?

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?

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?

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

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

Page 2, Line 2: Consider further definition of "temporary".

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 documentation does the agency refer?

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

1 02 NCAC 52B. 0214 is adopted with changes as published in 36:22 NCR 1775-1776 as follows:

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

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

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

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

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

29 (c) No permit is needed ~~for~~ for:

- 30 (i) direct shipment of a ~~rabbit~~ rabbit, or any species in the order of Lagomorpha, including hare and
31 pika, from a country or state without RHDV-2 or if the ~~rabbit~~ animal makes intervening stops only
32 in countries or states without RHDV-2, the ~~rabbit~~ animal is not commingled or exposed to another
33 ~~rabbit~~ animal in the order of Lagomorpha not shipped directly from the point of origin together, and
34 the ~~rabbit~~ animal is not exposed to materials such as cages, beddings, and supplies that have been
35 in contact with another ~~rabbit~~ animal in the order of Lagomorpha not shipped directly from the point
36 of origin ~~together.~~ together; or

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

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

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

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

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

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19 *History Note: Authority G.S. 106-317;*
20 *Eff. September 1, 2022.*

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0101

DEADLINE FOR RECEIPT: September 9, 2022

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

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:

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

9 ~~(1)~~(2) "Chief Financial Officer" means the officer or employee with primary bookkeeping responsibility
10 for a business that ~~manufactures~~manufactures, or sanitizes, sells or offers to sell bedding in
11 this State or manufactures and sells or offers to sell bedding to be sold in this state.

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

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

16 ~~(2)~~(5) "Person" means an individual, corporation, company, partnership, or other legal entity.
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18 *History Note: Authority G.S. 106-65.107;*

19 *Eff. April 1, 1984;*

20 *Amended Eff. January 1, 1988;*

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

22 *Readopted Eff. January 1, 2021;*

23 *Amended Eff. September 1, 2022.*

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0102

DEADLINE FOR RECEIPT: September 9, 2022

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

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

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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 (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.

21 (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

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

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

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

35 *History Note: Authority G.S. 106-65.107;*
36 *Eff. April 1, 1984;*
37 *Amended Eff. January 1, 1985;*

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

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0104

DEADLINE FOR RECEIPT: September 9, 2022

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 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 previously used material or bedding shall keep a record of the kind of material and
5 bedding which has been sanitized, that is available for inspection by the Division.

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

8 (c) The record shall include the following:

9 (1) the date of sanitization;

10 (2) the sanitization method used;

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

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

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

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

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

18 *Eff. September 1, 2022.*

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

AGENCY: North Carolina Board of Agriculture

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

DEADLINE FOR RECEIPT: September 9, 2022

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

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

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 .0106

DEADLINE FOR RECEIPT: September 9, 2022

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

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

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3 **02 NCAC 61 ~~.0106-.0105~~ 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 in the same room with
6 new or sanitized bedding or bedding materials, the secondhand bedding or previously-used materials must be
7 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.

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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. September 1, 2022.*

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0109

DEADLINE FOR RECEIPT: September 9, 2022

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

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

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

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

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

Has the Board adopted such rules?

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

1 02 NCAC 61 .0108 is amended as published in 36:20 NCR 1608-1609 as follows:

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3 **02 NCAC 61 ~~.0109-.0108~~ LICENSE FEES AND APPLICATIONS**

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

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

10 (b) The applicant shall submit a verification from the applicant's chief financial officer that he has examined the

11 records of the applicant and that the information provided in accordance with G.S. 106-65.103 correctly reflects the

12 information contained in the records of the applicant. However, if the Division has reason to believe that the

13 information provided is incomplete, misleading or incorrect, the Division may require the applicant to obtain a

14 certification of the required information by an independent Certified Public Accountant licensed to practice in North

15 Carolina.

16 (c) License fees, in accordance with G.S. 106-65.103, shall be paid in full on March 1 of each year or in quarterly

17 installments on March 1, June 1, September 1, and December 1 of each year. Applicants who have not operated for a

18 full calendar year may owe additional fees or be due a refund for the first year's operation, depending on the business

19 volume eligible for stamp exemption fee payment. Application forms for making the determination of fee payment

20 owed or refunded shall be furnished by the Division. When the requirements of G.S. 106-65.103(a) can be met, the

21 option described by G.S. 106-65.103(b) will no longer be available to the applicant.

22 (d) Applicants who have gone out of business in the initial year of their operation and who have paid the license fee

23 in accordance with G.S. 106-65.103 may apply for a refund for the remainder of the calendar year upon providing

24 verified proof of the bedding units sold or manufactured in North Carolina during the operating portion of the calendar

25 year.

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

27
28 *History Note: Authority G.S. 106-65.103; 106-65.107;*

29 *Eff. April 1, 1984;*

30 *Amended Eff. September 1, 1990; January 1, 1988;*

31 *Transferred from 15A NCAC 18B .0208 Eff. May 1, 2012;*

32 *Readopted Eff. January 1, 2021.*

33 *Amended Eff. September 1, 2022.*

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

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0111

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?

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

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

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3 **02 NCAC 61 ~~.0111,0110~~ 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 torn, abraded. Paper or plastic face tags shall not be allowed. Tags shall be printed or stamped on one side only in
7 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 or sewn ~~sewed~~ to the ~~pillows, mattresses, sleeping~~
9 ~~bags, comforters, and other articles of bedding~~. Tags shall not be altered or defaced in any manner. The labeling
10 requirements of another governmental unit 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. September 1, 2022.*