

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0101

DEADLINE FOR RECEIPT: Thursday, December 10, 2020

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 call our office to inquire concerning the staff recommendation.

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

On line 5, what is meant by "unless otherwise specified"? Do you need this language?

In Item (1), please capitalize "state"

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

02 NCAC 61 .0101 is readopted as published in 35:05 NCR as follows:

CHAPTER 61 - SANITATION OF BEDDING

02 NCAC 61 .0101 DEFINITIONS

The following definitions shall apply throughout these Rules unless otherwise specified:

- (1) "Chief Financial Officer" means the officer or employee with primary bookkeeping responsibility for a business that manufactures or sanitizes bedding in this state or manufactures bedding to be sold in this state.
- (2) "Person" means an individual, corporation, company, partnership, or other legal entity.

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

Eff. April 1, 1984;

Amended Eff. January 1, 1988;

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

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0102

DEADLINE FOR RECEIPT: Thursday, December 10, 2020

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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 call our office to inquire concerning the staff recommendation.

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

Overall, who is this Rules applicable to? Elsewhere you refer to secondhand bedding, but this doesn't have similar language. So, is this applicable to both the initial sale and the sale of secondhand bedding?

In Paragraph (a), please consider breaking this into multiple Paragraphs.

In (a), line 5, change "insure" to "ensure"

In (a), line 10, delete or define "easily"

In (b), change "is" to "shall be"

In (b), what is an "approved soap or detergent"? Approved by whom and in accordance with what? I assume that there is a standard (maybe a federal standard) that soaps and detergents must meet?

In (b), what is considered "clean"? I assume that you mean something like "free of debris and stains"? Please provide some additional information as to what is considered "clean."

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

02 NCAC 61 .0102 is readopted as published in 35:05 NCR 560 as follows:

02 NCAC 61 .0102 AUTHORIZED SANITIZING PROCESSES

(a) In the dry heat process, the 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 insure 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 easily read at all times through a window for that purpose.

(b) In the washing process, the bedding is boiled for two hours and washed with an approved soap or detergent. After drying, the bedding shall be clean to touch, sight, and smell.

*History Note: Authority G.S. 106-65.107;
 Eff. April 1, 1984;
 Amended Eff. January 1, 1985;
 Transferred from 15A NCAC 18B .0202 Eff. May 1, ~~2012~~ 2012;
 Readopted Eff. January 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0103

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

How is someone to request this? Are they to make a written request? Please provide some additional information.

How will it be determined whether approval is granted. I assume that you mean something like "The Division shall approve other methods of sanitation upon a showing by the applicant must demonstrate that the method destroys pathogenic microorganisms"

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

02 NCAC 61 .0103 is readopted as published in 35:05 NCR 560 as follows:

02 NCAC 61 .0103 OTHER METHODS OF SANITIZING

Notwithstanding the provisions of Rule .0102 of this Section, other methods of sanitizing may be used after receiving the approval of the Division. The applicant must demonstrate that the method destroys pathogenic microorganisms and arthropods, and removes dirt and filth.

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

Eff. April 1, 1984;

Amended Eff. September 1, 1990;

Transferred from 15A NCAC 18B .0203 Eff. May 1, ~~2012~~ 2012;

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0104

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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 call our office to inquire concerning the staff recommendation.

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

On line 5, what is "reasonably clean"? Please delete or define. Please note that I think if you define in .0102, you can just delete "reasonably"

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

02 NCAC 61 .0104 is readopted as published in 35:05 NCR 560 as follows:

02 NCAC 61 .0104 DISPOSAL OF UNCLEAN BEDDING

Secondhand bedding and previously-used materials that show evidence of contamination with feces, urine, pus, vomit, blood, mucus, or are not reasonably clean after using methods described in Rules .0102 or .0103 of this Section must be removed from use and destroyed.

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

Eff. April 1, 1984;

Transferred from 15A NCAC 18B .0204 Eff. May 1, ~~2012~~ 2012;

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0105

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

Add a comma after "cracks"

Please add G.S. 106-65.98 to the History Note.

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

02 NCAC 61 .0105 is readopted as published in 35:05 NCR 560 as follows:

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

When secondhand bedding or previously-used materials that have not been sanitized are stored in a bedding manufacturing establishment, a sanitizing business, a retail outlet, a distribution warehouse, or in the same room with new or sanitized bedding or bedding materials, the secondhand bedding or previously-used materials must be segregated from the new or sanitized bedding or bedding materials by partitions that are free of holes, cracks or other openings. The top of the partitions must be at least one foot higher than the level of the unsanitized materials.

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

Eff. April 1, 1984;

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

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0106

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

*When will numbers be issued? I assume upon application based upon G.S. 106-65.102
What is this Rule doing that is not already covered by G.S. 106-65.102? Is it necessary?*

I note that G.S. 106-65.102 requires folks to apply using your form. I assume that this is the same application form addressed by .0108? So, here, do you mean something like "Upon receipt of the application form set forth in Rule .0108 of this Chapter, the Division shall issue a registration number to all persons manufacturing or sanitizing bedding this State or manufacturing bedding to be sold in this State, unless the person has a registration number from another state."

Please capitalize "state"

What happens if they already have a number from another state? Will y'all just use that one?

If you need this rule, please add G.S. 106-65.102 to your History Note.

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

02 NCAC 61 .0106 is readopted as published in 35:05 NCR 560 as follows:

02 NCAC 61 .0106 NON-TRANSFERABLE REGISTRATION

North Carolina registration numbers shall be issued to all persons manufacturing or sanitizing bedding in this state or manufacturing bedding to be sold in this state unless the person has a registration number from another state. The North Carolina registration numbers shall not be transferable.

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

Eff. April 1, 1984;

Transferred from 15A NCAC 18B .0206 Eff. May 1, ~~2012~~ 2012;

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0107

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

In (b), how will the Division determine whether to grant approval?

Please add any relevant additional authority.

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

02 NCAC 61 .0107 is readopted as published in 35:05 NCR 560 as follows:

02 NCAC 61 .0107 TRANSFER OF MANUFACTURERS' AND SANITIZERS' LICENSES

(a) If any person to whom a manufacturer's license or sanitizer's license has been issued shall sell his manufacturing or sanitizing business he may transfer the license with the business in accordance with Paragraph (b) of this Rule.

(b) In order to make the transfer, the purchaser must submit the following and obtain approval from the Division:

- (1) the name and address of the seller;
- (2) the location of the establishment being purchased;
- (3) the name of the establishment being purchased;
- (4) the name and address of the purchaser;
- (5) the effective date of sale; and
- (6) whether the name of the establishment being purchased is to be changed, and if so, the name under which it is to be operated by the purchaser.

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

Eff. April 1, 1984;

Transferred from 15A NCAC 18B .0207 Eff. May 1, ~~2012~~ 2012;

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0108

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

In (a)(3), please add a comma after "mailing address"

In (b), (c), and (d), please correct the cross-reference to G.S. 130A-269. This statute has been recodified.

In (b), on line 12, by "may", do you mean "shall require the applicant..."

In (c), how is the license fee determined? I assume in accordance with G.S. 106-65.103 and will be based upon the total number of bedding units? Please provide some additional information.

In (c), by "may", do you mean "shall be paid"?

How can someone get in touch with the Public Health Pest Management Section? Is there a website available?

Please add any relevant additional authority.

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

02 NCAC 61 .0108 is readopted as published in 35:05 NCR 561 as follows:

02 NCAC 61 .0108 LICENSE FEES AND APPLICATIONS

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

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

(b) The applicant shall submit a verification from the applicant's chief financial officer that he has examined the records of the applicant and that the information provided in accordance with G.S. 130A-269(h) correctly reflects the information contained in the records of the applicant. However, if the Division has reason to believe that the information provided is incomplete, misleading or incorrect, the Division may require the applicant to obtain a certification of the required information by an independent Certified Public Accountant licensed to practice in North Carolina.

(c) License fees may be paid in full on March 1 of each year or in quarterly installments on March 1, June 1, September 1, and December 1 of each year. Applicants who have not operated for a full calendar year may owe additional fees or be due a refund for the first year's operation, depending on the business volume eligible for stamp exemption fee payment. Application forms for making the determination of fee payment owed or refunded shall be furnished by the Division. When the requirements of G.S. 130A-269(c) can be met, the option described by G.S. 130A-269(d) 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. 130A-269(d) may apply for a refund for the remainder of the calendar year upon providing verified proof of the bedding units sold or manufactured in North Carolina during the operating portion of the calendar year.

(e) All forms may be obtained from the Public Health Pest Management Section.

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

Eff. April 1, 1984;

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

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

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0109

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

G.S. 130A-269 has been recodified. Please provide the correct cross-reference.

Under what circumstances will a refund be due? How will this determination be made by the division?

Please add any relevant additional authority.

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

02 NCAC 61 .0109 is readopted as published in 35:05 NCR 561 as follows:

02 NCAC 61 .0109 CANCELLATION OF LICENSES

A license shall be issued to persons manufacturing or sanitizing bedding in this state or manufacturing bedding to be sold in this state in accordance with G.S. 130A-269. When the person to whom the license was issued goes out of business, the license shall be canceled. Upon submission of proof that a refund is owed to the person going out of business, and a determination by the Division that a refund is owed, a refund shall be made by the Division.

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

Eff. April 1, 1984;

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

Transferred from 15A NCAC 18B .0209 Eff. May 1, ~~2012~~ 2012;

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0110

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

Would it be helpful to say something like "In addition to the requirements set forth in G.S. 106-65.99..."?

Please consider breaking this Rule into several Paragraphs or Items.

On line 4, change "which" to "that" in "which will not"

On line 5, what is "fast black"? Is this known to your regulated public?

On line 6, delete or define "completely" and "securely"

Please add any relevant additional authority, including G.S. 106-65.99.

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

02 NCAC 61 .0110 is readopted as published in 35:05 NCR 561 as follows:

02 NCAC 61 .0110 DURABLE MATERIALS FOR TAGS

Identifying tags shall be of linen, muslin, or other durable cloth material which will not flake when abraded. Paper or plastic face tags shall not be allowed. Tags shall be printed or stamped on one side only in fast black letters. Tags shall be so located that the information contained thereon is completely visible to the purchaser at all times and shall be securely sewed to the pillows, mattresses, sleeping bags, comforters, and other articles of bedding. The labeling requirements of another governmental unit may appear on the tag.

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

Eff. April 1, 1984;

Amended Eff. January 1, 1988;

Transferred from 15A NCAC 18B .0210 Eff. May 1, ~~2102~~ 2012;

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0111

DEADLINE FOR RECEIPT: Thursday, December 10, 2020

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

On line 6, please correct the cross-referenced statutes.

On linen 6, delete "however"

When is the due date? How is this known?

On line 7, by "may", do you mean "shall"? If you mean "may", how will it be determined whether you will prohibit sales? I would think if the license is invalid, then they could not sell under any circumstances, so I am thinking this should be "shall"?

On line 7, should "sale" be "sales"?

Please add any relevant additional authority.

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

02 NCAC 61 .0111 is readopted as published in 35:05 NCR 561 as follows:

02 NCAC 61 .0111 EFFECTIVE DATE OF LICENSES

The licenses issued pursuant to these Rules shall be valid from the first day of March of any calendar year through the last day of February of the following calendar year, except for partial year licenses issued in accordance with G.S. 130A-269(d). However, if the license fee or an installment of the license fee has not been paid by the due date, the license shall be invalid and the Division may prohibit sale pursuant to G.S. 130A-271.

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

Eff. April 1, 1984;

Amended Eff. January 1, 1988;

Transferred from 15A NCAC 18B .0211 Eff. May 1, ~~2012~~ 2012;

Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0112

DEADLINE FOR RECEIPT: Thursday, December 10, 2020

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

What is the purpose of this Rule? Is it necessary?

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

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Board of Agriculture

RULE CITATION: 02 NCAC 61 .0112

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff is recommending objection to this Rule as being unnecessary and beyond the statutory authority of the agency. This Rule appears to address a legal conclusion that is appropriately addressed by the Courts.

Amber Cronk May
Commission Counsel

02 NCAC 61 .0112 is readopted as published in 35:05 NCR 561 as follows:

02 NCAC 61 .0112 SEVERABILITY

If any provision of these Rules or the application thereof to any person or circumstance is held invalid, the remainder of the rules, or the application of the provision to other persons or circumstances, shall not be affected thereby.

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

Eff. April 1, 1984;

Transferred from 15A NCAC 18B .0212 Eff. May 1, ~~2012~~ 2012;

Readopted Eff. January 1, 2021.