

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

AGENCY: Commission for Public Health

RULE CITATION: 15A NCAC 18A .2508

**DEADLINE FOR RECEIPT: Friday, June 10, 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:

*In (9), p.2, line 19, please define or delete "transitory".*

*In your History Note, is it necessary to cite to the two session laws? By my reading, neither contain applicable language that isn't otherwise codified in G.S. 130A-280.*

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

1 15A NCAC 18A .2508 is amended as published in 36:17 NCR 1431-1434 as follows:

2  
3 **15A NCAC 18A .2508 DEFINITIONS**

4 The following definitions apply throughout this Section:

- 5 (1) "Department" means North Carolina Department of Health and Human Services.
- 6 (2) "Equipment replacement" means replacement of individual components of the hydraulic and  
7 disinfection systems such as pumps, filters, and automatic chemical feeders.
- 8 (3) "Public swimming pool" means public swimming pool as defined in G.S. 130A-280. Public  
9 swimming pools are divided into five types:
- 10 (a) "Swimming pools" are public swimming pools used primarily for swimming.
- 11 (b) "Spas" are public swimming pools designed for recreational and therapeutic use that are  
12 not drained, cleaned, or refilled after each individual use. Spas may include units designed  
13 for hydrojet circulation, hot water, cold water mineral bath, air induction bubbles, or any  
14 combination thereof. Common terminology for spas includes "therapeutic pool,"  
15 "hydrotherapy pool," "whirlpool," "hot spa," and "hot tub."
- 16 (c) "Wading pools" are public swimming pools designed for use by children, including wading  
17 pools for toddlers and children's activity pools designed for casual water play ranging from  
18 splashing activity to the use of interactive water features placed in the pool.
- 19 (d) "Water recreation attractions" are pools designed for special purposes that differentiate  
20 them from swimming pools, wading pools, and spas. They include:
- 21 (i) water slide plunge pools and run out lanes, which transfer the kinetic energy of  
22 the users' velocity through friction to the slide;
- 23 (ii) wave pools;
- 24 (iii) rapid rides;
- 25 (iv) lazy rivers;
- 26 (v) interactive play attractions that incorporate devices using sprayed, jetted, or other  
27 water sources contacting the users and that do not incorporate standing or captured  
28 water as part of the user activity area;
- 29 (vi) training pools deeper than a 24 inch deep wading pool and shallower than a 36  
30 inch deep swimming pool; and
- 31 (vii) artificial swimming lagoons as defined in G.S. 130A-280.
- 32 (e) "Special purpose and therapy pools" are pools designed and used for therapeutic treatments  
33 or physical training and fitness outside of a licensed medical facility or practice of a  
34 licensed physical therapist. They include:
- 35 (i) float tanks used for float therapy in a salt brine solution;
- 36 (ii) swim spa training pools which use jetted water for stationary swimming against a  
37 water current;

- (iii) exercise therapy and treadmill pools equipped for water resistance exercise therapy; and
- (iv) scuba pools designed and used for training swimmers to use self-contained underwater breathing apparatus.
- (f) “Display spa at a temporary event” or “DSTE” is a portable, above ground spa that contains water but is not used for body immersion and is displayed at a temporary event.
- (4) "Registered Design Professional" means an individual who is registered or licensed to practice engineering as defined by G.S. 89C or architecture as defined by G.S. 83A.
- (5) "Remodeled" means renovated in a manner requiring disruption of the majority of the pool shell or deck, changes in the pool profile, or redesign of the pool hydraulic system.
- (6) "Repair" means returning existing equipment to working order, replastering or repainting of the pool interior, replacement of tiles or coping, and similar maintenance activities. This term includes replacement of pool decks where the Department has determined that no changes are needed to underlying pipes or other pool structures.
- (7) "Safety vacuum release system" means a system or device capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to suction outlet flow blockage.
- (8) "Splash zone" means the area of an interactive play attraction that sheds water to a surge tank or container to be recirculated.
- (9) “Temporary event” means a transitory fair, carnival, circus, festival, or public exhibition.
- ~~(9)~~(10) "Unblockable drain" means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.
- ~~(10)~~(11) "Water feature" means any component within a public swimming pool that pumps, jets, or sprays water above the waterline.

*History Note: Authority G.S. 130A-280; 130A-282; S.L. 2019-88; S.L. 2021-77;*

*Eff. May 1, 1991;*

*Temporary Amendment Eff. June 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Amended Eff. April, 1, 2013; May 1, 2010; March 1, 2004; April 1, 1999; January 1, 1996; October 1, 1994;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019;*

*Temporary Amendment Eff. December 3, 2019;*

*Amended Eff. July 1, 2022; October 1, 2020.*

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

AGENCY: Commission for Public Health

RULE CITATION: 15A NCAC 18A .2545

**DEADLINE FOR RECEIPT: Friday, June 10, 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:

*Were the post-publication changes made pursuant to public comment?*

*In (3)(d), line 25, should this read “34 ppm” or “3 ppm”? It’s not clear whether “4” is struck-through.*

*In (5), lines 30-31, which Rules are you referring to when you say “the water quality standards set out in the Rules of this Section?” Is it just R .2535 and item (3) of this Rule? I think it’s important to have clarity here because these Rules do not apply except as stated herein.*

*In (6), what water quality records are you requiring? Is this a reference to (3)(b), above?*

*Is the reference to SL 2021-77 necessary in the History Note? It does not appear that there are any relevant portions of the SL that are not otherwise codified in the G.S.*

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

1 15A NCAC 18A .2545 is adopted with changes as published in 36:17 NCR 1431-1434 as follows:

2  
3 **15A NCAC 18A .2545 DISPLAY SPA AT A TEMPORARY EVENT**

4 A display spa at a temporary event (DSTE) shall not be required to comply with the Rules of this Section except as  
5 specified in this Rule.

- 6 (1) A DSTE shall not operate without a permit that has been issued by the local health department that  
7 serves the county in which the temporary event is located. The duration of a permit for a DSTE shall  
8 be no more than 21 consecutive calendar days. The applicant may apply for additional permits to  
9 operate a DSTE for multiple 21-day periods at the same temporary event.
- 10 (2) One permit application shall be submitted for each DSTE. The applicant shall submit the application  
11 for a permit at least 15 calendar days before commencing operation of a DSTE. The application  
12 form shall be submitted to the local health department that serves the county in which the temporary  
13 event is located and shall include the following information:
- 14 (a) applicant's name, address, and phone number;
  - 15 (b) name of the temporary event;
  - 16 (c) street address of the temporary event;
  - 17 (d) proposed operating dates; and
  - 18 (e) signature of the applicant.
- 19 (3) A DSTE shall meet the requirements of Rule .2535 of this Section, except as follows:
- 20 (a) automatic chemical feeders shall not be required;
  - 21 (b) written records shall only be required to include disinfectant concentration, pH, and the  
22 type and amount of chemicals added to the DSTE;
  - 23 (c) disinfectant residual shall be measured every day before opening the DSTE to the ~~public;~~  
24 public and every four hours thereafter until the DSTE is closed for the day;
  - 25 (d) disinfectant concentrations shall be maintained at or above 34 ppm free chlorine or 48 ppm  
26 free bromine; and
  - 27 (e) pH shall be maintained between 7.0-7.8.
- 28 (4) A sign shall be posted on each permitted DSTE that states: "DISPLAY SPA – ONLY HANDS AND  
29 FOREARMS ALLOWED IN WATER." The text on the sign shall be at least 2 inches in height.
- 30 (5) When the water in a DSTE does not meet the water quality standards set out in the Rules of this  
31 Section or is closed for the day, Section, the DSTE shall be kept closed with a latched or locked  
32 cover that prevents the public from coming into contact with the DSTE water. The applicant shall  
33 post a sign on the DSTE that states: "SPA CLOSED." The text on the sign shall be at least 2 inches  
34 in height.
- 35 (6) The applicant shall keep water quality records on site during the temporary event and for six months  
36 after the completion of the temporary event. The applicant shall provide water quality records to the  
37 local health department that issued the DSTE permit and the Department upon request.

- 1 (7) All pool chemicals stored on-site at the temporary event shall be stored in a water resistant, covered  
2 container in an area that is not used by the public.
- 3 (8) When the applicant or applicant's designee is not available to supervise a DSTE, the DSTE shall be  
4 kept closed with a latched or locked cover that prevents the public from coming into contact with  
5 the DSTE water.
- 6 (9) The permit for each DSTE shall be posted for the duration of the temporary event in a location that  
7 is visible to the public.
- 8 (10) The applicant or the applicant's designee shall report any death, serious injury, or complaint of illness  
9 attributed to the applicant's DSTE in accordance with Rule .2540 of this Section.
- 10

11 *History Note: Authority G.S. 130A-280; 130A-282; S.L. 2021-77;*  
12 *Eff. July 1, 2022.*

1 15A NCAC 18A .2901 is readopted as published in 36:17 NCR 1434-1435 as follows:

2  
3 **15A NCAC 18A .2901 DISBURSEMENT OF FUNDS**

4 (a) For the purposes of this Rule, the following definitions shall apply:

5 (1) “Department” means the North Carolina Department of Health and Human Services.

6 (2) “Disaster” means when a declaration has been made by the President of the United States under 44  
7 C.F.R. Part 206, Subpart B, which is hereby incorporated by reference, including any subsequent  
8 editions or amendments, or by the Governor of North Carolina under G.S. 166A-19.3(3).

9 (3) “Emergency” means when a state of emergency declaration has been issued under G.S. 166A-  
10 19.3(19).

11 (4) “Event” means a National Special Security Event designated by the President of the United States  
12 under 18 U.S.C. 3056(e)(1), which is hereby incorporated by reference, including any subsequent  
13 editions or amendments.

14 (5) “Rate of compliance” means the number of inspections for food and lodging establishments  
15 conducted by the local health department during the previous state fiscal year divided by the number  
16 of inspections mandated to be conducted by the local health department per state fiscal year pursuant  
17 to G.S. 130A-249 and 10A NCAC 46 .0213, not to exceed a value of 1.

18 (b) Fees collected pursuant to G.S. 130A-248(d), minus state expenses budgeted for the collection and inventory  
19 program, shall be distributed to local health departments for the support of local public health programs and activities  
20 as follows:

21 (1) ~~Seven~~seven hundred and fifty dollars (\$750.00) to each county; and

22 (2) the ~~remaining~~ balance of funds that remain after the distribution described in Subparagraph (b)(1)  
23 of this Rule shall be distributed to each county in accordance with the following formula: formula  
24 provided in Subparagraph (b)(2)(A) of this Rule. After the distribution of funds pursuant to  
25 Subparagraph (b)(2)(A) of this Rule, the balance of any funds that remain shall be distributed in  
26 accordance with the formula provided in Subparagraph (b)(2)(B) of this Rule to the counties that  
27 have one hundred percent compliance with the inspection requirements for food and lodging  
28 establishments as set out in G.S. 130A-249 and 10A NCAC 46 .0213 in the immediately preceding  
29 state fiscal year:

30 ~~(a)(A)~~ [the remaining balance of funds after distribution in ~~Paragraph (1)~~ Subparagraph (b)(1) of  
31 this Rule] multiplied by (the number of facilities in the county divided by the number of  
32 facilities in the state) multiplied by ~~(the (the county's percentage rate of compliance~~  
33 ~~compliance) with mandatory inspection requirements for food and lodging establishments~~  
34 ~~in G.S. 130A-249 and 15A NCAC 25 .0213 for the previous fiscal year, not to exceed 100~~  
35 ~~percent)~~ equals the allocation to the county; and

36 ~~(b)(B)~~ distribution of remaining funds to counties with 100 percent compliance with mandatory  
37 inspection requirements for food and lodging establishments in G.S. 130A-249 and 15A

1 ~~NCAC 25 .0213 during the previous fiscal year shall be made in accordance with the~~  
2 ~~following:~~ [total amount of remaining funds after distribution in Paragraph-Subparagraph  
3 ~~(b)(2)(A)] ~~(2)(a)~~ multiplied by (the number of facilities in the county divided by the~~  
4 number of facilities in all counties with 100 percent compliance with mandatory inspection  
5 requirements for food and lodging establishments as set forth in G.S. 130A-249 and  
6 ~~15A-10A NCAC 2546 .0213~~ during the previous fiscal year) equals the additional allocation  
7 to the county.

8 (c) Notwithstanding the definition of rate of compliance in Paragraph (a) of this Rule, the total amount of funds  
9 distributed to a local health department shall be calculated in accordance with Paragraph (b) of this Rule, but using  
10 the local health department's rate of compliance from the last state fiscal year that was completed immediately prior  
11 to a disaster, emergency, or event, when:

12 (1) one or more counties served by the local health department is named in a disaster or emergency  
13 declaration or in an event designation;

14 (2) the local health director or the local health director's designee submits a written attestation to the  
15 State Environmental Health Director that includes the following:

16 (A) an explanation of how disruption caused by the disaster, emergency, or event is such that  
17 inspections that are required pursuant to G.S. 130A-249 and 10A NCAC 46 .0213 for food  
18 and lodging establishments cannot be carried out as planned because of the local health  
19 department's involvement in the response to the disaster, emergency, or event; and

20 (B) a statement that the loss of funds as a result of the local health department's decreased rate  
21 of compliance is expected to result in a financial hardship to the local health department's  
22 environmental health program; and

23 (3) the Department determines that sufficient funds are available to make a disbursement to the local  
24 health department in accordance with this Paragraph.

25 (d) Attestations written pursuant to Paragraph (c) of this Rule shall be submitted to the State Environmental Health  
26 Director by mail at 5605 Six Forks Road, 1632 Mail Service Center, Raleigh, NC 27699-1632.

27  
28 *History Note: Authority G.S. 130A-9; 130A-248; 130A-249;*

29 *Eff. May 1, 1991; 1991.*

30 *Readopted Eff. July 1, 2022.*